

# LOCAL RULES OF PRACTICE



**UNITED STATES DISTRICT COURT**

**FOR THE**

**NORTHERN DISTRICT OF NEW YORK**

**Effective January 1, 2004**

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF NEW YORK**

**Forward**

The Board of Judges for the Northern District of New York have adopted the following time schedule for the approval and amendment of the Local Rules of Practice. The Court will solicit comment on new and amended local rules from the bar and public during the months of May, June and July. Comments should be addressed to:

Lawrence K. Baerman  
Clerk of Court  
James Hanley Federal Building  
P.O. Box 7367  
100 South Clinton Street  
Syracuse, New York 13261-7367

New and amended rules of practice will be forwarded to the Circuit Council of the Second Circuit for review and approval during the month of October. All new and amended local rules will become effective on January 1<sup>st</sup> each year. The Clerk of the Court will then make available to the bar and public the amended local rules.

<p><b>Please note that the Court's Local Rules and General Orders may be obtained from the Court's webpage at "<a href="http://www.nynd.uscourts.gov">www.nynd.uscourts.gov</a>".</b></p>
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## SUMMARY OF AMENDMENTS EFFECTIVE JANUARY 1, 2004

<b>Local Rule</b>	<b>Description of Modification</b>
<b>General Comments</b>	Grammatical and typographic changes have been made throughout the Local Rules. These changes, unless noted below, do not materially affect the substance of the Rules.
<b>Preamble</b>	Updated to reflect new judicial officers and new office phone numbers
<b>5.1.2</b>	Provision enacted to allow for the implementation of the Electronic Case Filing System.
<b>7.1</b>	Parties are now required to select the next regularly scheduled return date of the presiding Judicial Officer. Only Chambers may adjourn motions.
<b>7.1(b)(1)</b>	The briefing schedule for dispositive motions has been modified to reflect the abolishment of the “motion package rule.” Motions must be filed and served at least thirty-one days prior to the return date. Opposition papers must be filed and served at least seventeen days prior to the return date. Reply papers must be filed and served at least eleven days prior to the return date. Surreplies are not permitted.
<b>7.1(b)(1)</b>	This Rule has been modified to require a court conference prior to filing a non-dispositive motion before the assigned Magistrate Judge. Actions which involve an incarcerated, pro se party are exempt from this new requirement.
<b>7.1(c)</b>	Cross-motions must now be filed and served at the time opposition papers to the original motion are filed and served. (Seventeen calendar days prior to the return date.)
<b>7.1(e)</b>	Immediately after filing an Order to Show Cause, counsel are required to telephone the Chambers of the presiding judicial officer to inform Chambers staff that they have filed an Order to Show Cause.
<b>8.1</b>	Counsel are required to redact the specified personal identifiers from all pleadings and documents filed with the Court.
<b>Local Criminal Rule 1.2</b>	Provision enacted to allow for the implementation of the Electronic Case Filing System.
<b>Local Criminal Rule 12(a)</b>	The motion briefing schedule has been modified to reflect a new 31-17- 11 day briefing schedule. (Motions must be filed and served at least thirty-one days prior to the return date. Opposition papers must be filed and served at least seventeen days prior to the return date. If leave is granted to file reply papers, they must be filed and served at least eleven days prior to the return date.)

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

**OFFICERS**

**ACTIVE JUDGES:**

Hon. Frederick J. Scullin, Jr., Chief Judge  
Federal Building and U.S. Courthouse  
P.O. Box 7255  
Syracuse, NY 13261-7255

Hon. Norman A. Mordue  
Federal Building and U.S. Courthouse  
P.O. Box 7336  
Syracuse, NY 13261-7336

Hon. Lawrence E. Kahn  
James T. Foley U.S. Courthouse  
445 Broadway, Room 424  
Albany, NY 12207-2926

Hon. David N. Hurd  
Alexander Pirnie Federal Building  
10 Broad Street  
Utica, NY 13501

**SENIOR JUDGES:**

Hon. Howard G. Munson  
Federal Building and U.S. Courthouse  
P.O. Box 7376  
Syracuse, NY 13261-7376

Hon. Thomas J. McAvoy  
Federal Building and U.S. Courthouse  
15 Henry Street  
Binghamton, NY 13901

Hon. Neal P. McCurn  
Federal Building and U.S. Courthouse  
P.O. Box 7365  
Syracuse, NY 13261-7365

**MAGISTRATE JUDGES:**

Hon. Gustave J. DiBianco  
Federal Building and U.S. Courthouse  
P.O. Box 7396  
Syracuse, NY 13261-7396

Hon. David R. Homer  
James T. Foley U.S. Courthouse  
445 Broadway, Room 441  
Albany, NY 12207

Hon. Randolph F. Treece  
James T. Foley U.S. Courthouse  
445 Broadway, Room 407  
Albany, NY 12207

Hon. Gary L. Sharpe  
James T. Foley U.S. Courthouse  
445 Broadway, First Floor South  
Albany, NY 12207

Hon. David E. Peebles  
Federal Building & U.S. Courthouse  
P.O. Box 7346  
Syracuse, NY 13261-7346

Hon. Larry A. Kudrle  
53 Court Street  
Plattsburgh, NY 12901-2834

**BANKRUPTCY JUDGES:**

Hon. Stephen D. Gerling, Chief Judge  
Alexander Pirnie Federal Building  
Utica, NY 13501

Hon. Robert E. Littlefield, Jr.  
James T. Foley U.S. Courthouse  
Albany, NY 12201

**UNITED STATES ATTORNEY:**

Federal Building and U.S. Courthouse  
Room 900  
100 South Clinton Street  
Syracuse, NY 13261  
315-448-0672

Federal Building and U.S. Courthouse  
15 Henry Street  
Binghamton, NY 13901  
607-773-2887

James T. Foley U.S. Courthouse  
445 Broadway, Room 231  
Albany, NY 12201  
518-431-0247

**UNITED STATES  
COURT REPORTERS:**

Federal Building and U.S. Courthouse  
15 Henry Street  
Binghamton, NY 13901

Federal Building and U.S. Courthouse  
100 South Clinton Street  
Syracuse, NY 13260

James T. Foley U.S. Courthouse  
445 Broadway  
Albany, NY 12201

**UNITED STATES PROBATION OFFICE:**

Paul DeFelice, Chief Probation Officer

James T. Foley U.S. Courthouse  
445 Broadway  
P.O. Box 433  
Albany, NY 12201  
518-257-1700

P.O. Box 7035  
Syracuse, NY 13261-7035  
315-234-8700

**DISTRICT COURT CLERK:**

Lawrence K. Baerman, Clerk

Federal Building and U.S. Courthouse  
P.O. Box 7367  
100 South Clinton Street  
Syracuse, NY 13261-7367  
315-234-8500

U.S. Courthouse  
15 Henry Street  
Binghamton, NY 13901  
607-773-2893

James T. Foley U.S. Courthouse  
445 Broadway  
Albany, NY 12207  
518-257-1800

U.S. Courthouse  
Alexander Pirnie Federal Building  
10 Broad Street  
Utica, NY 13501  
315-793-8151

**BANKRUPTCY CLERK:**

Richard G. Zeh, Sr.

James T. Foley U.S. Courthouse  
Albany, NY 12201  
518-257-1661

Alexander Pirnie Federal Building  
Utica, NY 13501  
315-793-8101

**UNITED STATES MARSHAL:**

Alexander Pirnie Federal Building  
10 Broad Street  
Utica, NY 13501  
315-793-8109

James T. Foley U.S. Courthouse  
P.O. Box 1128  
Albany, NY 12201  
518-431-0101

Federal Building and U.S. Courthouse  
15 Henry Street  
Binghamton, NY 13901  
607-773-2723

Federal Building and U.S. Courthouse  
100 South Clinton Street  
Syracuse, NY 13261  
315-448-0340

**FEDERAL PUBLIC DEFENDER**

Alex Bunin

Syracuse Office  
4 Clinton Exchange Building  
Syracuse, NY 13202  
315-701-0080

Burlington Vermont Office  
P.O. Box 1112  
Burlington, VT 05402-1112  
802-951-6472

Albany Office  
39 North Pearl Street  
Albany, NY 12207  
518-436-1850

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**SECTION I.**  
**SCOPE OF THE RULES**  
**ONE FORM OF ACTION**

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**1.1 Scope of the Rules.**

**(a) Title and Citation.**

These are the Local Rules of Practice for the United States District Court for the Northern District of New York. They shall be cited as "L.R.\_\_\_\_."

**(b) Effective Date; Transitional Provision.**

These Rules became effective on **January 1, 2004.** Recent amendments are noted with the phrase (Amended January 1, 2004).

**(c) Scope of the Rules; Construction.**

These Rules supplement the Federal Rules of Civil and Criminal Procedure. They shall be construed so as to be consistent with those Rules and to promote the just, efficient and economical determination of every action and proceeding.

**(d) Sanctions and Penalties for Noncompliance.**

Failure of an attorney or of a party to comply with any provision of these Rules, General Orders of this District, Orders of the Court, or the Federal Rules of Civil or Criminal Procedure shall be a ground for imposition of sanctions.

**(e) Definitions.**

1. The word "court," except where the context otherwise requires, refers to the United States District Court for the Northern District of New York.
2. The word "judge" refers either to a United States District Judge or to a United States Magistrate Judge, where appropriate.
3. The words "assigned judge," except where the context otherwise requires, refer to the United States District Judge or United States Magistrate Judge exercising jurisdiction with respect to a particular action or proceeding.

4. The words "Chief Judge" refer to the Chief Judge or a judge temporarily performing the duties of Chief Judge under 28 U.S.C. § 136(e).
5. The word "clerk" refers to the Clerk of the Court or to a deputy clerk whom the Clerk designates to perform services of the general class provided for in Fed. R. Civ. P. 77.
6. The word "marshal" refers to the United States Marshal of this district and includes deputy marshals.
7. The word "party" shall include a party's representative.
8. Reference in these Rules to an attorney for a party is in no way intended to preclude a party from appearing pro se, in which case reference to attorney applies to the pro se litigant.
9. Where appropriate the "singular" shall include the "plural" and vice versa.

## **1.2 Availability of the Local Rules.**

Copies of these Rules are available from the Clerk's office or at the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

## **2.1 One Form of Action.**

[Reserved.]

## **SECTION II.**

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#### **3.1 Civil Cover Sheet.**

A completed civil cover sheet on a form available from the Clerk shall be submitted with every complaint, notice of removal, or other document initiating a civil action. This requirement is solely for administrative purposes, and matters appearing on the civil cover sheet have no legal effect in the action.

#### **3.2 Venue.**

Venue for civil cases filed in the Northern District of New York shall be controlled by the Court's Civil Case Assignment Plan.

#### **3.3 Complex and Multi-district Litigation.**

(a) If the judge presiding over a case determines, in his or her discretion, that the case is of such a complex nature that it cannot reasonably be trial ready within eighteen months from the date the complaint is filed, the judge may design and issue a particularized case management order which will move the case to trial as quickly as the complexity of the case allows.

(b) The parties shall promptly notify the Court in writing if any action commenced is appropriate for multi-district litigation.



#### **4.1 Service of Process.**

(a) Service shall be made in the manner specified in the Federal Rules of Civil Procedure or as required or permitted by statute. The party seeking service of papers shall be responsible for arranging the service. The Clerk is authorized to sign orders appointing persons to serve process.

(b) Upon the filing of a complaint, the Clerk shall issue to the plaintiff General Order 25 which requires, among other things, service of process upon all defendants within sixty (60) days of the filing of the complaint. This expedited service requirement is necessary to ensure adequate time for pretrial discovery and motion practice. In no event shall service of process be completed after the time specified in Fed. R. Civ. P. 4.

(c) At the time the complaint or notice of removal is served, the party seeking to invoke the jurisdiction of this Court shall also serve on all parties the following materials:

1. Judicial Case Assignment Form;
2. Joint Civil Case Management Plan Containing Notice of Initial Pretrial Conference;
3. Notice and Consent Form to Proceed Before a United States Magistrate Judge; and
4. Notice and Consent Form for the Court Sponsored Alternative Dispute Resolution Procedures.

The Clerk shall furnish these material to the party seeking to invoke the jurisdiction of this Court at the time the complaint or notice of removal is filed.

#### **5.1 Service and Filing of Papers.**

(a) All pleadings and other papers shall be served and filed in accordance with the Federal Rules of Civil Procedure and shall be in the form prescribed by L.R. 10.1. The party or its designee shall declare, by affidavit or certification, that they have provided all other parties in the action with all documents they have filed with the Court. See also L.R. 26.2 (discovery material).

(b) In civil actions where the Court has directed a party to submit an order or judgment, that party shall file all such orders or judgments in duplicate, and the Clerk's entry of such duplicate in the proper record book shall be deemed in compliance with Fed. R. Civ. P. 79(b). Such party shall also furnish the Clerk with a sufficient number of additional copies for each party to the action, which the Clerk shall mail with notice of entry in accordance with Fed. R. Civ. P. 77(d).

(c) In a civil action, on filing a notice of appeal, the appellant shall furnish the Clerk with a sufficient number of copies for mailing in accordance with Fed. R. App. P. 3(d).

(d) On filing of a motion pursuant to Fed. R. Civ. P. 65.1, the moving party shall furnish the Clerk with a sufficient number of copies of the motion and notice of the motion in compliance with the mailing provision of that rule.

(e) No paper on file in the Clerk's office shall be removed except pursuant to the Court's order.

(f) All civil complaints submitted to the Clerk for filing shall be accompanied by a summons or, if electing to serve by mail, the approved service by mail forms, together with sufficient copies of the complaint for service on each of the named defendants.

(g) Every summons shall be served by a private process server, except as otherwise required by statute or rule or as the Court directs for good cause shown. A private process server is any person authorized to serve process in an action brought in the New York State Supreme Court or in the court of general jurisdiction of the State in which service is made.

(h) In the case of a prisoner's civil rights action, or any action where a party has been granted leave to proceed in forma pauperis, the Marshal shall serve the summons and complaint by regular mail pursuant to Fed. R. Civ. P. 4(c)(2). The Marshal shall file the return or other acknowledgment of service with the Court. The return shall constitute *prima facie* evidence of the service of process. If no acknowledgment of service is filed with the Court, the Marshal shall notify the plaintiff and, if requested by the plaintiff, shall make personal service as provided in Fed. R. Civ. P. 4.

### **5.1.2 Electronic Case Filing** (Amended January 1, 2004)

All cases filed in this Court may be assigned to the Electronic Case Files System ("ECF") in accordance with the *Procedural Order on Electronic Case Filing (General Order #22)*, the provisions of which are incorporated herein by reference, and which the Court may amend from time to time. Copies of General Order # 22 are available at the Clerk's office or at the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

### **5.2 Prepayment of Fees.**

#### **(a) Filing Fees.**

A party commencing an action or removing an action from a state court must pay to the Clerk the statutory filing fee before the case will be docketed and process issued. In forma pauperis proceedings are governed by Title 28 U.S.C. § 1915 and L. R. 5.4.

#### **(b) Miscellaneous Fees.**

The Clerk shall not be required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for the service is paid in advance.

### **5.3 Schedule of Fees.**

Fee schedules are available at the Clerk's office or at the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

### **5.4 Civil Actions Filed In Forma Pauperis; Applications for Leave to Proceed In Forma Pauperis.**

(a) On receipt of a complaint or petition and an application to proceed in forma pauperis, and supporting documentation as required for prisoner litigants, the Clerk shall promptly file the complaint or petition without the payment of fees and assign the action in accordance with L.R. 40.1. The complaint, application, and supporting documentation then shall be forwarded to the assigned Magistrate Judge for a determination of whether the applicant will be granted leave to proceed in forma pauperis and whether the complaint or petition shall be served by the Marshal. Prior to service of process by the Marshal pursuant to 28 U.S.C. § 1915(d) and L.R. 5.1(h), the Court shall review all actions filed pursuant to 28 U.S.C. § 1915 to determine whether *sua sponte* dismissal is appropriate. The granting of an in forma pauperis application shall in no way relieve the party of the obligation to pay all other fees for which such party is responsible regarding such action, including, but not limited to, copying and/or witness fees.

(b) Whenever a fee is due for a civil action subject to the Prison Litigation Reform Act ("PLRA"), the prisoner must comply with the following procedure:

1. (A) Submit a signed, fully completed and properly certified in forma pauperis application; and  
(B) Submit the authorization form issued by the Clerk's office.
2. (A) (i) If the prisoner **has not** fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, a judicial officer shall, by Court order, inform the prisoner as to what must be submitted in order to proceed with such action in this District ("Order").  
  
(ii) The Order shall afford the prisoner **thirty (30) days** in which to comply with the terms of same. If the prisoner fails to fully comply with the terms of such Order within such period of time, the action shall be dismissed.  
  
(B) If the prisoner **has** fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, the judicial officer shall review the in forma pauperis application. The granting of the application shall in no way relieve the prisoner of the obligation to pay the full amount of the filing fee.
3. After being notified of the filing of the civil action, the agency having custody of the prisoner shall comply with the provisions of 28 U.S.C. § 1915(b) regarding the filing fee due concerning the action.

### **5.5 Filing by Facsimile.**

The Clerk's office shall not accept any facsimile transmission unless the Court gives prior approval.

### **5.6 Service of the Writ in Exclusion and Deportation Cases.**

(a) After delivery of an alien for deportation to the master of a ship or the commanding officer of an airplane, the writ shall be addressed to, and served on, the master or commanding officer only. Notice to the respondent of the allowance or issuance of the writ shall not be recognized as binding without proper service. Service shall be made by delivery of the original writ to the respondent while the alien is in custody. Service shall not be made on a master after a ship has cast off her moorings.

(b) In case the writ is served on the master of a ship or on the commanding officer of an airplane, such person may deliver the alien at once to the officer from whom such person received the alien for custody until the return day. In such case, the writ shall be deemed returnable promptly; and the custody of the officer receiving the alien shall be deemed that of the respondent, pending disposition of the writ.

### **5.7 Documents to be provided to the Clerk.**

All pretrial and settlement conference statements shall be provided to the Clerk but not filed. These documents are not for public view. Forms for preparation of pretrial and settlement conference statements are available from the Clerk's office or at the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

### **6.1 Calculation of Time Periods.**

[Reserved.]

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## **7.1 Motion Practice.**

### **Introduction - Motion Dates and Times.** (Amended January 1, 2004)

Unless the Court directs otherwise, motions shall be made returnable at the **next regularly scheduled motion date at least thirty-one days from the date the motion is filed and served.** The moving party shall select a return date in accordance with the procedures set forth in subdivision (b). If the return date selected is not the next regularly scheduled motion date, or if no return date is selected, the Clerk will set the proper return date and notify the parties.

Information regarding motion dates and times is specified on the case assignment form provided to the parties at the commencement of the litigation or may be obtained from the Clerk's office or at the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

#### **(a) Papers Required.**

Except as otherwise provided in this paragraph, all motions and opposition to motions require a memorandum of law, supporting affidavit, and proof of service on all the parties. See L.R. 5.1(a). Additional requirements for specific types of motions, including cross-motions, See L.R. 7.1(c), are set forth in this rule.

#### **1. Memorandum of Law.**

No party shall file or serve a memorandum of law that exceeds twenty- five (25) pages in length, unless leave of the judge hearing the motion is obtained prior to filing. All memoranda of law shall contain a table of contents and, wherever possible, parallel citations. Memoranda of law that contain citations to decisions exclusively reported on computerized databases (e.g., Westlaw, Lexis, Juris, etc.) shall be accompanied by copies of the decisions.

When making a motion based upon a rule or statute, the moving papers must specify the rule or statute upon which the motion is predicated.

A memorandum of law is required for all motions except the following:

- (A) a motion pursuant to Fed. R. Civ. P. 15 to amend or supplement a pleading;
- (B) a motion pursuant to Fed. R. Civ. P. 12(e) for a more definite statement;
- (C) a motion pursuant to Fed. R. Civ. P. 17 to appoint next friend or guardian ad litem;
- (D) a motion pursuant to Fed. R. Civ. P. 25 for substitution of parties; and
- (E) a motion pursuant to Fed. R. Civ. P. 37 to compel discovery.

## **2. Affidavit.**

An affidavit must not contain legal arguments but must contain factual and procedural background as appropriate for the motion being made.

An affidavit is required for all motions except the following:

- (A) a motion pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted;
- (B) a motion pursuant to Fed. R. Civ. P. 12(c) for judgment on the pleadings; and
- (C) a motion pursuant to Fed. R. Civ. P. 12(f) to strike a portion of a pleading.

## **3. Summary Judgment Motions.**

Any motion for summary judgment shall contain a Statement of Material Facts. The Statement of Material Facts shall set forth, in numbered paragraphs, each material fact about which the moving party contends there exists no genuine issue. Each fact listed shall set forth a specific citation to the record where the fact is established. The record for purposes of the Statement of Material Facts includes the pleadings, depositions, answers to interrogatories, admissions and affidavits. It does not, however, include attorney's affidavits. Failure of the moving party to submit an accurate and complete Statement of Material Facts shall result in a denial of the motion.

The opposing party shall file a response to the Statement of Material Facts. The non-movant's response shall mirror the movant's Statement of Material Facts by admitting and/or denying each of the movant's assertions in matching numbered paragraphs. Each denial shall set forth a specific citation to the record where the factual issue arises. The non-movant's response may also set forth any additional material facts that the non-movant contends are in dispute in separately numbered paragraphs. Any facts set forth in the Statement of Material Facts shall be deemed admitted unless specifically controverted by the opposing party.

## **4. Motions to Amend or Supplement Pleadings or for Joinder or Interpleader.**

An unsigned copy of the proposed amended pleading must be attached to a motion brought under Fed. R. Civ. P. 14, 15, 19-22. Except as provided by leave of Court, the proposed amended pleading must be a complete pleading, which will supersede the original pleading in all respects. No portion of the prior pleading shall be incorporated into the proposed amended pleading by reference.

The motion must set forth specifically the proposed amendments and identify the amendments in the proposed pleading, either through the submission of a red-lined version of the original pleading or other equivalent means.

Where leave to supplement a pleading is sought under Fed. R. Civ. P. 15(d), the proposed supplemental pleading must be limited to acts that occurred subsequent to the filing of the original pleading. The paragraphs in the proposed pleading must be numbered consecutively to the paragraphs contained in the pleading that is to be supplemented.

**Caveat:** The granting of the motion does not constitute the filing of the amended pleading. After leave is given, unless otherwise ordered, the moving party must file and serve the original signed amended pleading within ten (10) days of the Order granting the motion.

**(b) Motions.**

**1. Dispositive Motions.** (Amended January 1, 2004)

All motion papers must be filed with the Court and served upon the other parties not less than **THIRTY-ONE DAYS** prior to the return date of the motion. The Notice of Motion must state the return date which has been selected by the moving party.

Opposing papers must be filed with the Court and served upon the other parties not less than **SEVENTEEN DAYS** prior to the return date of the motion.

Reply papers must be filed with the Court and served upon the other parties not less than **ELEVEN DAYS** prior to the return date of the motion.

A surreply is not permitted.

All original motion papers, including memoranda of law and supporting affidavits, if any, shall be filed in accordance with the *Administrative Procedures for Electronic Case Filing* (General Order #22) and/or the case assignment form provided to the parties at the commencement of the litigation. The assigned judge may request that the parties provide a courtesy copy of the motion papers.



## **2. Non-Dispositive Motions.**

(Amended January 1, 2004)

Prior to making any non-dispositive motion before the assigned Magistrate Judge, the parties must make **good faith efforts among themselves to resolve or reduce all differences relating to the non-dispositive issue**. If, after conferring, the parties are unable to arrive at a mutually satisfactory resolution, the party seeking relief must then request a court conference with the assigned Magistrate Judge.

**A court conference is a prerequisite to filing a non-dispositive motion before the assigned Magistrate Judge.** Within the notice of motion, the moving party is required to set forth the date that the court conference with the Magistrate Judge was held regarding the issues being presented in the motion. Failure to include this information within the notice of motion may result in the rejection of the motion papers.

Actions which involve an incarcerated, pro se party are not subject to the requirement that a court conference be held prior to filing a non-dispositive motion.

Unless the Court orders otherwise, all motion papers must be filed with the Court and served upon the other parties not less than **THIRTY-ONE DAYS** prior to the return date of the motion.

Opposing papers must be filed with the Court and served upon the other parties not less than **SEVENTEEN DAYS** prior to the return date of the motion.

**Reply papers are not permitted without the Court's prior permission.**

## **3. Failure To Timely File or Comply.**

Any papers required under this Rule that are not timely filed or are otherwise not in compliance with this Rule shall not be considered unless good cause is shown. Where a properly filed motion is unopposed and the Court determines that the moving party has met its burden to demonstrate entitlement to the relief requested therein, the non-moving party's failure to file or serve any papers as required by this Rule shall be deemed as consent to the granting or denial of the motion, as the case may be, unless good cause is shown.

Any party who does not intend to oppose a motion, or a movant who does not intend to pursue a motion, shall promptly notify the Court and the other parties of such intention. Notice should be provided at the earliest practicable date, but in any event no less than **SEVEN CALENDAR DAYS** prior to the scheduled return date of the motion, unless for good cause shown. **Failure to comply with this Rule may result in the Court imposing sanctions.**

**(c) Cross-Motions.**

(Amended January 1, 2004)

A cross-motion may be filed and served at the time opposition papers to the original motion are filed and served (not less than **SEVENTEEN DAYS** prior to the return date of the motion). If a cross-motion is made, the cross-motion brief must be joined with the opposition brief and may not exceed twenty-five (25) pages in length, exclusive of exhibits. A separate brief in opposition to the original motion is not permissible.

The original moving party may reply in further support of the original motion and in opposition to the cross-motion with a reply/opposition brief that does not exceed twenty-five (25) pages in length, exclusive of exhibits. The reply/opposition papers must be filed with the Court and served on the other parties not less than **ELEVEN DAYS** prior to the return date of the original motion.

The cross-moving party may not reply in further support of its cross-motion without the Court's prior permission.

**(d) Discovery Motions.**

The following steps are required prior to making any discovery motion pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure.

1. Parties must make good faith efforts among themselves to resolve or reduce all differences relating to discovery prior to seeking court intervention.
2. The moving party must confer in detail with the opposing party concerning the discovery issues between them in a good faith effort to eliminate or reduce the area of controversy and to arrive at a mutually satisfactory resolution. Failure to do so may result in denial of a motion to compel discovery and/or imposition of sanctions.
3. If the parties' conference does not fully resolve the discovery issues, the party seeking relief must then request a court conference with the assigned Magistrate Judge. Incarcerated, pro se parties are not subject to the court conference requirement prior to filing a motion to compel discovery. The assigned Magistrate Judge may direct the party making the request for a court conference to file an affidavit setting forth the date(s) and mode(s) of the consultation(s) with the opposing party and a letter that concisely sets forth the nature of the dispute and a specific listing of each of the items of discovery sought or opposed. Immediately following each disputed item, the party must set forth the reason why the item should be allowed or disallowed.

4. Following a request for a discovery conference, the Court may schedule a conference and advise all parties of a date and time. The discovery conference may be conducted by telephone conference call, initiated by the party making the request for the conference, by video conference, or by personal appearance, as directed by the assigned Magistrate Judge.
5. Following a discovery conference, the Court may direct the prevailing party to submit a proposed order, on notice to the other parties.
6. If a party fails or refuses to confer in good faith with the requesting party, thus requiring the request for a discovery conference, at the Court's discretion, the resisting party will be subject to the sanction of the imposition of costs, including the attorneys' fees of opposing counsel in accordance with Fed. R. Civ. P. 37.
7. A party claiming privilege with respect to a communication or other item must specifically identify the privilege and the grounds for the privilege claimed. No generalized claims of privilege may be made.
8. Any motion to compel discovery authorized by these Rules shall be filed no later than **TEN CALENDAR DAYS** after the discovery cut-off date. See L.R. 16.2.

**(e) Order to Show Cause.**

(Amended January 1, 2004)

All motions brought by Order to Show Cause shall conform with the requirements set forth in L. R. 7.1(a)(1) and (2). **Immediately after filing an Order to Show Cause, the moving party must telephone the Chambers of the presiding judicial officer and inform Chambers staff that they have filed an Order to Show Cause.** Telephone numbers for all Chambers may be obtained from the Clerk's office or at the Court's webpage at "**[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)**." The Court shall determine the briefing schedule and return date applicable to motions brought by Order to Show Cause.

In addition to the requirements set forth in Local Rule 7.1(a)(1) and (2), a motion brought by Order to Show Cause must include an affidavit clearly and specifically showing good and sufficient cause why the standard Notice of Motion procedure cannot be used. Reasonable advance notice of the application for an Order to Show Cause must be given to the other parties, except in those circumstances where the movant can demonstrate, in a detailed and specific affidavit, good cause and substantial prejudice that would result from the requirement of reasonable notice.

An Order to Show Cause must contain a space for the assigned judge to set forth (a) the deadline for supporting papers to be filed and served, (b) the deadline for opposing papers to be filed and served, and (c) the date and time for the hearing.

**(f) Temporary Restraining Order.**

A temporary restraining order may be sought by Notice of Motion or Order to Show Cause, as appropriate. Filing procedures and requirements for supporting documents are the same as set forth in this Rule for other motions. Any application for a temporary restraining order must be served on all other parties unless otherwise permitted by Fed. R. Civ. P. 65. Motions for injunctive relief, other than those brought by Order to Show Cause, are governed by L.R. 7.1(b)(2). Motions brought by Order to Show Cause are governed by L.R. 7.1(e).

**(g) Motion for Reconsideration.**

Motions for reconsideration or reargument, unless otherwise governed by Fed. R. Civ. P. 60, may be filed and served no later than **TEN CALENDAR DAYS** after the entry of the challenged judgment, order, or decree. All motions for reconsideration shall conform with the requirements set forth in L.R. 7.1(a)(1) and (2). The briefing schedule and return date applicable to motions for reconsideration shall conform to L.R. 7.1(b)(2). Motions for reconsideration or reargument will be decided on submission of the papers, without oral argument, unless the Court directs otherwise.

**(h) Oral Argument.**

On all motions made to a district court judge, except motions for reconsideration, the parties shall appear for oral argument on the scheduled return date of the motion. In the discretion of the district court judge, or on consideration of a request of any party, a motion returnable before a district court judge may be disposed of without oral argument. Thus, the parties should be prepared to have their motion papers serve as the sole method of argument on the motion.

On all motions made to a magistrate judge, the parties shall not appear for oral argument on the scheduled return date of the motion unless the Magistrate Judge *sua sponte* directs or grants the request of any party for oral argument.

**(i) Sanctions for Vexatious or Frivolous Motions or Failure to Comply with this Rule.**

A party who presents vexatious or frivolous motion papers or fails to comply with this Rule is subject to discipline as the Court deems appropriate, including sanctions and the imposition of costs and attorneys' fees to opposing counsel.

**(j) Adjournments.**

Adjournment of motions is in the Court's discretion. Any party seeking an adjournment from the court must first contact the opposing party. No motion under this Rule will be adjourned more than two times unless the party seeking the adjournment has satisfied the Court that a further adjournment is necessary. In no event shall an adjournment last longer than four months. The party requesting the adjournment is responsible for renoticing the motion. Any motion not renoticed within four months from the initial adjournment will be deemed withdrawn.

## **8.1 Personal Privacy Protection.**

(Amended January 1, 2004)

Parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all pleadings filed with the Court, including exhibits thereto, whether filed electronically or in paper form, unless the Court orders otherwise.

1. **Social security numbers.** If an individual's social security number must be included in a document, use only the last four digits of that number.
2. **Names of minor children.** If the involvement of a minor child must be mentioned, use only the initials of that child.
3. **Dates of birth.** If an individual's date of birth must be included in a document, use only the year.
4. **Financial account numbers.** If financial account numbers are relevant, use only the last four digits of those numbers.
5. **Home Addresses.** If a home address must be used, use only the City and State.

In addition, caution shall be exercised when filing documents that contain the following:

- 1) personal identifying number, such as a driver's license number;
- 2) medical records, treatment and diagnosis;
- 3) employment history;
- 4) individual financial information; and
- 5) proprietary or trade secret information.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers specified above may file an unredacted document under seal. The Court shall retain this document as part of the record. The Court may, however, still require the party to file a redacted copy for the public. Counsel is strongly urged to discuss this issue with all their clients so that an informed decision about the inclusion of certain information may be made. The responsibility for redacting these personal identifiers **rests solely with counsel and the parties.** The Clerk will not review each pleading for compliance with this Rule. Counsel and the parties are cautioned that failure to redact these personal identifiers may subject them to the Court's full disciplinary power.

**Exception:** Transcripts of the administrative record in social security proceedings and state court records relating to a habeas corpus petitions are exempt from this requirement.

## **9.1 Request for Three-Judge Court.**

Whenever a party believes that the relief requested in a lawsuit is such that it may be granted only by a three-judge court, the words "Three-Judge Court," or the equivalent, shall be included immediately following the title of the first pleading in which the cause of action requesting a three-judge court is asserted. Unless the basis for the request is apparent from the pleading, it shall be set forth in the pleading or in an attached statement. On the convening of a three-judge court, in addition to the original papers on file, the following shall be made available to the clerk for distribution: three copies of the pleadings, three copies of the motion papers, and three copies of all memoranda of law.

## **9.2 Requirement to File a Civil RICO Statement.**

In any action in which a party asserts a claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., the party asserting such a claim shall file, within thirty (30) days of the filing of the pleading containing such claim, a RICO statement. This statement shall conform to the format that the Court has adopted and shall be entitled "RICO Statement." Copies of General Order #14 - CIVIL RICO STATEMENT FILING REQUIREMENTS may be obtained from the Clerk's office or at the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)." This statement shall state in detail and with specificity the information requested in the RICO Statement. The Court shall construe the RICO Statement as an amendment to the pleadings.

## **10.1 Form of Papers.**

(a) **Form Generally.** All pleadings, motions, and other documents presented for filing shall be in the following form:

- 8 ½ x 11 inch white paper of good quality,
- plainly and legibly written, typewritten, printed or reproduced,
- without erasures or interlineation materially defacing them,
- in black ink,
- pages fastened,
- text in minimum 12 point type; footnotes minimum 10 point type,
- text double-spaced
- block quotation and footnotes may be single-spaced,
- extensive footnotes may not be used to circumvent page limitations,
- compacted or other compressed printing features are prohibited,
- 3 inch top margin on first page,
- typed matter not exceeding 6-1/2 x 9-1/2 inches on subsequent pages,
- pages consecutively numbered,
- punched with two (2) holes approximately 1/4 inch in diameter, centered 2-3/4 inches apart, 1/2 to 5/8 inch from top edge of document,
- the Court may order electronic submission in a WordPerfect-compatible format.

Documents that do not comply with the requirements listed above may be rejected upon order of the Court.

(b) **Information required.** The following information must appear on each document filed:

1. A caption, which must include the title of the Court, the title of the action, the civil action number of the case, the initials of the assigned judges, and the name or nature of the paper in sufficient detail for identification. **Affidavits and declarations must be separately captioned and must not be physically attached to the Notice of Motion or Memorandum of Law.**

2. Each document must identify the person filing the document. This identification must include an original signature of the attorney or pro se litigant; the typewritten name of that person; the address of a pro se litigant; and the bar roll number, office address, telephone number, e-mail address and fax number of the attorney. **All attorneys of record and pro se litigants must immediately notify the Court of any change of address.** The notice of change of address is to be filed with the Clerk and served on all other parties to the action. The notice must identify each and every action for which the notice shall apply.

Attorneys shall also file a new registration statement within ten days of a change of address, firm name, telephone number, e-mail address and fax number. Attorney registration forms may be obtained at the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov);" see also L.R. 41.2(b); L.R. 83.1(e).

- (c) The record on hearings, unless ordered printed, shall be plainly typewritten and bound in book form, paged and indexed.
- (d) All documents including exhibits must be in the English language or be accompanied by an English translation.

#### **11.1 Signing of Pleadings, Motions, and Other Papers; Sanctions.**

[Reserved.]

#### **12.1 Defenses and Objections - How Presented.**

[Reserved.]

#### **13.1 Counterclaims and Cross-Claims.**

[Reserved.]

#### **14.1 Impleader.**

See L.R. 7.1(a)(4).

#### **15.1 Form of a Motion to Amend and Its Supporting Documentation.**

See L.R. 7.1(a)(4).

## **16.1 Civil Case Management.**

This Court has found that the interests of justice are most effectively served by adopting a systematic, differential case management system that tailors the level of individualized and case-specific management to such criteria as case complexity, time required to prepare a case for trial, and availability of judicial and other resources.

**(a) Filing of Complaint/Service of Process.** Upon the filing of a complaint, the Clerk shall issue to the plaintiff General Order 25, which requires, among other things, service of process upon all defendants within sixty (60) days of the filing of the complaint. This expedited service requirement is necessary to ensure adequate time for pretrial discovery and motion practice.

**(b) Assignment of District Judge/Magistrate Judge.** Upon filing of a complaint, the Clerk shall assign a district judge and a magistrate judge to preside over each case. The assignment shall be made in accordance with the provisions of the case assignment plan. Once assigned, either judicial officer shall have authority to design and issue a case management order.

**(c) Initial Pretrial Conference.** Except for cases excluded under section II of General Order 25, an initial pretrial conference pursuant to Fed. R. Civ. P. 16 shall be held within 120 days after the filing of the complaint. The Clerk shall set the date of this conference upon the filing of the complaint. The purpose of this conference will be to prepare and adopt a case-specific management plan which will be memorialized in a case management order. See subsection (d) below. In order to facilitate the adoption of such a plan, prior to the scheduled conference, counsel for all parties shall confer among themselves as required by Fed. R. Civ. P. 26(f) and shall use the Civil Case Management Plan form contained in the General Order 25 filing packet. The parties' jointly-proposed plan, or if consensus cannot be reached, each party's proposed plan, shall be filed with the Clerk at least ten (10) business days prior to the scheduled pretrial conference.

**(d) Subject Matter of Initial Pretrial Conference.** At the initial pretrial conference, the Court shall consider, and the parties shall be prepared to discuss, the following:

1. Deadlines for joinder of parties, amendment of pleadings, completion of discovery, and filing of dispositive motions;
2. Trial date;
3. Requests for jury trial;
4. Subject matter and personal jurisdiction;
5. Factual and legal bases for claims and defenses;
6. Factual and legal issues in dispute;
7. Factual and legal issues that can be agreed upon or which can be narrowed through motions and which will expedite resolution of the dispute;



8. Specific relief requested, including method for computing damages;
9. Intended discovery and proposed methods to limit and/or decrease time and expense thereof;
10. Suitability of case for voluntary arbitration;
11. Measures for reducing length of trial;
12. Related cases pending before this or other U.S. District Courts;
13. Procedures for certifying class actions, if appropriate;
14. Settlement prospects; and
15. If the case is in the ADR track, choice of ADR method and estimated time for completion of ADR.

**(e) Uniform Pretrial Scheduling Order.** Upon completion of the initial pretrial conference, the presiding judge may issue a Uniform Pretrial Scheduling Order setting forth deadlines for joinder of parties, amendment of pleadings, production of expert reports, completion of discovery, and filing of motions; a trial ready date; the requirements for all trial submissions; and if an ADR track case, the ADR method to be used and the deadline for completion of ADR.

**(f) Enforcement of Deadlines.** Deadlines that the Court institutes in any case management order shall be strictly enforced and shall not be modified by the Court, even upon stipulation of the parties, except upon a showing of good cause.

## **16.2 Discovery Cut-Off.**

The "discovery cut-off" is that date by which all responses to written discovery shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded. Counsel are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this Rule. Discovery requests that call for responses or scheduled depositions after the discovery cut-off will not be enforceable except by order of the court for good cause shown. Motions to compel discovery shall be filed and served no later than ten (10) days after the discovery cut-off. See L.R. 7.1(d)(8).

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### **17.1 Actions by or on Behalf of Infants and/or Incompetents.**

(a) An action by or on behalf of an infant or incompetent shall not be settled or compromised, or voluntarily discontinued, dismissed or terminated, without leave of the Court embodied in an order, judgment or decree. The proceedings on an application to settle or compromise such an action shall conform to the New York State statutes and rules; but the Court, for good cause shown, may dispense with any New York State requirement.

(b) The Court shall authorize payment of a reasonable attorneys' fee and proper disbursements from the amount recovered in such an action, whether realized by settlement, execution or otherwise, and shall determine the fee and disbursements, after due inquiry as to all charges against the amount recovered.

(c) The Court shall order the balance of the proceeds of the recovery or settlement to be distributed as it deems will best protect the interest of the infant or incompetent.

### **18.1 Joinder of Claims and Remedies.**

See L.R. 7.1(a)(4).

### **19.1 Joinder of Persons Necessary for Just Adjudication.**

See L.R. 7.1(a)(4).

### **20.1 Permissive Joinder of Parties.**

See L.R. 7.1(a)(4).

**21.1 Misjoinder and Nonjoinder of Parties.**

See L.R. 7.1(a)(4).

**22.1 Interpleader.**

[Reserved.]

**23.1 Designation of "Class Action" in the Caption.**

(a) In any case sought to be maintained as a class action pursuant to Fed. R. Civ. P. 23, the complaint or other pleading asserting a class action shall include next to its caption the words "Class Action."

(b) The plaintiff also shall check the appropriate box on the Civil Cover Sheet at the time of filing the action.

**23.2 Certification of a Class Action**

As soon as practicable after the commencement of an action designated as a "Class Action," the plaintiff shall file a motion, with the assigned district judge, seeking an order of the court determining that the action may be maintained as a class action.

**24.1 Intervention.**

[Reserved.]

**25.1 Substitution of Parties.**

[Reserved.]

## **SECTION V. DEPOSITIONS AND DISCOVERY**

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### **26.1 Form of Certain Discovery Documents.**

The parties shall number each interrogatory or request sequentially, regardless of the number of sets of interrogatories or requests. In answering or objecting to interrogatories, requests for admission, or requests to produce or inspect, the responding party shall first state verbatim the propounded interrogatory or request and immediately thereafter the answer or objection.

### **26.2 Filing Discovery.**

Parties shall not file notices to take depositions, transcripts of depositions, interrogatories, requests for documents, requests for admissions, disclosures, and answers and responses to these notices and requests unless the Court orders otherwise; provided, however, that discovery material to be used at trial or in support of any motion, including a motion to compel or for summary judgment, shall be filed with the Court prior to the trial or motion. Any motion pursuant to Fed. R. Civ. P. 37 shall be accompanied by the discovery materials to which the motion relates if those materials have not previously been filed with the Court.

### **26.3 Production of Expert Witness Information.**

There shall be binding disclosure of the identity of expert witnesses. Such disclosure, including a curriculum vitae and, unless waived by the other parties, service of the expert's written report pursuant to Fed. R. Civ. P. 26(a)(2)(B), must be made before the completion of discovery in accordance with the deadlines contained in the Uniform Pretrial Scheduling Order or any other Court order. Failure to comply with these deadlines may result in the imposition of sanctions, including the preclusion of testimony, pursuant to Fed. R. Civ. P. 16(f).

If a treating physician is expected to be called as a witness, he or she must be identified in accordance with the timetable provided in the Uniform Pretrial Scheduling Order or other Court order.

### **26.4 Timing of Discovery.**

Fed. R. Civ. P. 26(d), which prohibits discovery prior to a meeting and conference between the parties, and Fed. R. Civ. P. 26(f), which directs parties to meet and confer with each other relative to the nature and basis of claims and defenses to a lawsuit, shall not apply to any action in which a party is incarcerated.

### **27.1 Depositions Before Action or Pending Appeal.**

[Reserved.]

### **28.1 Persons Before Whom Depositions Shall be Taken.**

[Reserved.]

### **29.1 Discovery Stipulations.**

[Reserved.] See L.R. 16.1(f); 16.2.

### **30.1 Depositions.**

Unless the Court orders otherwise pursuant to Fed. R. Civ. P. 5(d) and 26(c), transcripts of depositions when received and filed by the Clerk, shall then be opened by the Clerk who shall affix the filing stamp to the cover page of the transcripts. See L.R. 26.2.

### **31.1 Depositions On Written Questions.**

[Reserved.]

**32.1 Use of Depositions in Court Proceedings.**

[Reserved.]

**33.1 Interrogatories.**

[Reserved.]

**34.1 Production of Documents and Things.**

[Reserved.]

**35.1 Physical and Mental Examination of Persons.**

[Reserved.]

**36.1 Requests for Admission.**

[Reserved.]

**37.1 Form of Discovery Motions.**

See L.R. 7.1(d).

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### **38.1 Notation of "Jury Demand" in the Pleading.**

(a) If a party demands a jury trial as permitted by Fed. R. Civ. P. 38(b), the party shall place a notation on the front page of the initial pleading signed by the party stating "Demand for Jury Trial" or an equivalent statement. This notation shall serve as a sufficient demand under Fed. R. Civ. P. 38(b).

(b) In cases removed from state court, a party may file a "Demand for Jury Trial" that is separate from the initial pleading. See Fed. R. Civ. P. 81.3; L.R. 81.3.

### **39.1 Opening Statements and Closing Arguments.**

The Court will determine the time to be allotted for opening and closing arguments.

### **39.2 Submission of Pretrial Papers.**

All pretrial submissions are to be filed in accordance with the requirements of the Uniform Pretrial Scheduling Order unless the Court orders otherwise.

### **40.1 Case Assignment System.**

Immediately upon the filing of a civil action or proceeding, the Clerk shall assign to such action or proceeding a district judge and magistrate judge pursuant to the Court's Assignment Plan. See General Order #12.

### **40.2 Preferences.**

Only the following causes shall be entitled to preferences:

1. Issues in bankruptcy framed by an answer to a bankruptcy petition which are triable by a jury;
2. Causes entitled to a preference under any statute of the United States;
3. Causes restored to the calendar for a new trial by the setting aside of a former verdict, by reversal of a former judgment, or after a mistrial;
4. Causes to which a receiver appointed by any court or a trustee or debtor-in-possession in a bankruptcy proceeding is a party;
5. Causes which, in the discretion of the assigned judge, are entitled to a preference for meritorious reasons.

Preferences shall be obtained only by order of the Court on two-days notice of the application.

### **40.3 Trial Calendar.**

The trial calendar number shall be the same as the docket number. No note of issue is required. Each judge shall dispose of cases as required by law and the effective administration of justice.



#### **41.1 Settlements, Apportionments and Allowances in Wrongful Death Actions.**

In an action for wrongful death

1. The Court shall apportion the proceeds of the action only where required by statute;
2. The Court shall approve a settlement only in a case covered by subdivision 1; and
3. The Court shall approve an attorneys' fee only upon application in accordance with the provisions of the Judiciary Law of the State of New York.

#### **41.2 Dismissal of Actions.**

(a) Each judge shall from time to time notice for hearing on a dismissal calendar such actions or proceedings assigned to that judge which appear not to have been diligently prosecuted. Whenever it appears that the plaintiff has failed to prosecute an action or proceeding diligently, the assigned judge shall order it dismissed. In the absence of an order by the assigned judge or magistrate judge setting any date for any pretrial proceeding or for trial, the plaintiff's failure to take action for four (4) months shall be presumptive evidence of lack of prosecution. Unless otherwise ordered by the assigned judge or magistrate judge, each party shall, not less than ten (10) days prior to the noticed hearing date, serve and file a certificate setting forth the status of the action or proceeding and whether good cause exists to dismiss it for failure to prosecute. The parties need not appear in person. No explanations communicated in person, over the telephone, or by letter shall be acceptable. If a party fails to respond as required by this Rule, the Court shall issue a written order dismissing the case for failure to prosecute or providing for sanctions or making other directives to the parties as justice requires. Nothing in this Rule shall preclude any party from filing a motion to dismiss an action or proceeding for failure to prosecute under Fed. R. Civ. P. 41(b).

(b) Failure to notify the Court of a change of address in accordance with L.R. 10.1(b) may result in the dismissal of any pending action.

#### **41.3 Actions Dismissed by Stipulation.**

Stipulations of dismissal shall be signed by each attorney and/or pro se litigant appearing in the action. Any action which is submitted for dismissal by stipulation of the parties shall contain the following language, if applicable: "That no party hereto is an infant or incompetent." For actions involving an infant or incompetent. See L.R. 17.1.

#### **42.1 Separation of Issues in Civil Suits.**

[Reserved.]

#### **43.1 Examination of Witnesses.**

[Reserved.]

#### **44.1 Official Records.**

[Reserved.]

#### **45.1 Subpoenas.**

[Reserved.] See Fed. R. Civ. P. 45.

#### **46.1 Exceptions to Rulings.**

[Reserved.]

#### **47.1 Grand and Petit Jurors.**

Grand and petit jurors to serve at stated and special sessions of the Court shall be summoned pursuant to the Jury Selection and Service Act of 1968, as amended, codified in Title 28 of the United States Code, and the Plan adopted and approved by the judges of this Court and approved by the Judicial Council for the Court of Appeals for the Second Circuit. The selection of grand and petit jurors is made by random selection from voter registration lists and supplemented by, if available, lists of licensed drivers from the New York State Department of Motor Vehicles. Court sessions, pursuant to 28 U.S.C. § 112, are designated to be held in the Northern District of New York in the cities of Albany, Auburn, Binghamton, Malone, Syracuse, Utica and Watertown. For jury selection purposes under § 1869(c) of the Act, this district is divided into divisions from which jurors are selected for the particular place where jury sessions are to be held. The divisions are as follows:

1. ALBANY DIVISION: Albany, Clinton, Columbia, Essex, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren and Washington Counties.
2. AUBURN DIVISION: Cayuga, Cortland and Tompkins Counties.
3. BINGHAMTON DIVISION: Broome, Chenango, Delaware, Otsego and Tioga Counties.
4. SYRACUSE DIVISION: Madison, Onondaga and Oswego Counties.
5. UTICA DIVISION: Fulton, Hamilton, Herkimer, Montgomery and Oneida Counties.
6. WATERTOWN - MALONE DIVISION: Franklin, Jefferson, Lewis and St. Lawrence Counties.

A copy of the Plan for the NDNY for Random Selection of Grand and Petit Jurors, is available upon request at the Clerk's office or on the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

#### **47.2 Jury Selection.**

(a) **Voir Dire.** Voir dire examination shall be conducted by the Court, by the attorneys, or by both, as the Court shall determine. Within the sound discretion of the Court, the attorneys' examination shall be limited by time and subject matter.

(b) **Impanelment of the Jury.** Unless otherwise ordered, the jury shall be impaneled by use of the "Strike" or "Jury Box" selection method at the discretion of the Court.

(c) **Peremptory Challenges.** Unless otherwise provided, peremptory challenges shall be exercised alternately by all parties.

(d) **Waiver of Peremptory Challenges.** Except when using the strike method, to pass or refuse to exercise a peremptory challenge shall constitute a waiver of the right to exercise the challenge.

#### **47.3 Assessment of Juror Costs.**

Whenever any civil action scheduled for jury trial is postponed, settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all juror costs, including marshal's fees, mileage and per diem, shall be assessed against the parties and/or their attorneys as the Court directs, unless the Court and the Clerk's office are notified at least one full business day prior to the day on which the action is scheduled for trial, in time to advise the jurors that it shall not be necessary for them to attend. The parties shall receive an advance estimation of costs upon request to the Clerk.

#### **47.4 Jury Deliberation.**

**Availability of Attorneys During Jury Deliberations.** Attorneys shall be available on short notice during jury deliberations in the event of a verdict or a question by the jury. The Clerk shall be kept informed as to where attorneys will be at all times when the jury is deliberating. Attorneys should not leave the building without the prior approval of the presiding judge.

#### **47.5 Jury Contact Prohibition.**

The following rules apply in connection with contact between attorneys or parties and jurors:

1. At any time after the Court has called a jury panel from which jurors shall be selected to try cases for a term of Court fixed by the presiding judge or otherwise impaneled, no party or attorney, or anyone associated with the party or the attorney, shall have any communication or contact by any means or manner with any juror until such time as the panel of jurors has been excused and the term of court ended.
2. This prohibition is designed to prevent all unauthorized contact between attorneys or parties and jurors and does not apply when authorized by the judge while court is in session or when otherwise authorized by the presiding judge.

#### **48.1 Number of Jurors.**

In civil cases the Court shall determine the number of jurors, which shall not be less than six nor more than twelve.

#### **49.1 Special Verdicts and Interrogatories.**

[Reserved.]

#### **50.1 Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings.**

[Reserved.]

#### **51.1 Instructions to the Jury.**

**When Submitted and Served.** See Uniform Pretrial Scheduling Order issued by the court following the initial pretrial conference. See L.R. 16.1(e).

#### **52.1 Proposed Findings in Civil Cases.**

(a) In civil non-jury trials, each party shall submit proposed findings of fact and conclusions of law sufficiently detailed that, if adopted by the Court, would form an adequate factual basis, supported by anticipated evidence, for the resolution of the case and the entry of judgment.

#### **(b) When Submitted and Served.**

See Uniform Pretrial Scheduling Order issued by the Court following the initial pretrial conference. See L.R. 16.1(e).

#### **53.1 Masters.**

[Reserved]

#### **53.2 Master's Fees.**

The Court, in its discretion, shall fix the compensation of masters. Factors the Court shall consider include expended hours, disbursements, the relative complexity of the matter, and whether the parties have previously consented to a reasonable rate of compensation. The compensation and disbursements shall be paid and taxed as costs in the manner and amounts that the Court directs unless the parties stipulate otherwise.

### **53.3 Oath of Master, Commissioner, etc.**

Every person appointed master, special master, commissioner, special commissioner, referee, assessor or appraiser (collectively referred to as "master") shall take and subscribe an oath, which, except as otherwise prescribed by statute or rule, shall be to the effect that said duties shall be faithfully and impartially discharged. The oath shall be taken before any federal or state officer authorized by federal law to administer oaths and shall be filed in the Clerk's office.

## **SECTION VII. JUDGMENTS**

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### **54.1 Taxation of Costs.**

#### **(a) Procedure for Taxation in Civil Cases.**

The party entitled to recover costs shall file, within thirty (30) days after entry of judgment, a verified bill of costs on the forms that the Clerk provides. The verified bill of costs shall include the date on which the party shall appear before the Clerk for taxation of the costs and proof of service of a copy on the party liable for the costs. Post-trial motions shall not serve to extend the time within which a party may file a verified bill of costs as provided by this Rule, except on an order extending the time. Forms for the preparation of a bill of costs are available from the Clerk's office or at the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

#### **(b) To Whom Payable.**

Except in criminal cases, suits for civil penalties for violations of criminal statutes, and government cases not handled by the Department of Justice, all costs taxed are payable directly to the party entitled thereto and not to the Clerk, unless the Court orders otherwise.

#### **(c) Waiver of Costs.**

Failure to file a bill of costs within the time provided for in this Rule shall constitute a waiver of the taxable costs.

#### **54.2 Jury Cost Assessment.**

See L.R. 47.3.

#### **54.3 Award of Attorneys' Fees.**

[Reserved]

#### **54.4 Allowances to Attorneys and Receivers.**

Every attorney and receiver requesting an allowance for services rendered in a civil action where a receiver has been appointed shall, on filing the receiver's report with the Clerk, file a detailed statement of the services and the amount claimed, with a statement of any partial allowance previously made, together with an affidavit of the applicants, stating that no agreement has been made, directly or indirectly, and that no understanding exists for a division of fees between the attorney and the receiver. The petition shall be heard and allowance made on notice as the Court shall direct.

#### **55.1 Certificate of Entry of Default**

A party applying for a certificate of entry of default by the Clerk pursuant to Fed. R. Civ. P. 55(a) shall submit an affidavit showing that (1) a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend the action as provided by the Federal Rules of Civil Procedure and (2) the pleading to which no response has been made was properly served.

#### **55.2 Default Judgment.**

(a) By the Clerk.

When a party is entitled to have the Clerk enter a default judgment pursuant to Fed. R. Civ. P. 55(b)(1), the party shall submit, with the form of judgment, **the Clerk's certificate of entry of default**, a statement showing the principal amount due, not to exceed the amount demanded in the complaint, giving credit for any payments, and showing the amounts and dates of payment, a computation of the interest to the day of judgment, a per diem rate of interest, and the costs and taxable disbursements claimed. An affidavit of the party or the party's attorney shall be appended to the statement showing that

1. The party against whom judgment is sought is not an infant or an incompetent person;
2. The party against whom judgment is sought is not in the military service, or if unable to set forth this fact, the affidavit shall state that the party against whom judgment is sought by default is in the military service or that the party seeking a default judgment is not able to determine whether or not the party against whom judgment by default is sought is in the military service;

3. The party has defaulted in appearance in the action;
4. Service was properly effectuated under Fed. R. Civ. P. 4;
5. The amount shown by the statement is justly due and owing and that no part has been paid except as set forth in the statement required by this Rule; and
6. The disbursements sought to be taxed have been made in the action or will necessarily be made or incurred.

The Clerk shall then enter judgment for principal, interest and costs. If, however, the Clerk determines, for whatever reason, that it is not proper for a default judgment to be entered, the Clerk shall forward the documents submitted in accordance with **L.R. 55.2(a)** to the assigned district judge for review. The assigned district judge shall then promptly notify the Clerk as to whether the Clerk shall properly enter a default judgment under this **L.R. 55.2(a)**.

(b) By the Court.

A motion to the Court for the entry of a default judgment, pursuant to Fed. R. Civ. P. 55(b)(2), shall be accompanied by a **clerk's certificate of entry of default** in accordance with Fed. R. Civ. P. 55(a), a **proposed form of default judgment**, and by a copy of the pleading to which no response has been made. The application also shall be accompanied by an affidavit of the party or the party's attorney setting forth facts as required by L.R. **55.2(a)**.

#### **56.1 Summary Judgment Procedure.**

See L.R. 7.1 (a)(3).

#### **56.2 Notice to Pro Se Litigants of the Consequences of Failing to Respond to a Summary Judgment Motion.**

When moving for summary judgment against a pro se litigant, the moving party shall inform the pro se litigant of the consequences of failing to respond to the summary judgment motion. Counsel for the moving party shall send a notice to the pro se litigant that a motion for summary judgment seeks dismissal of some or all of the claims or defenses asserted in their complaint or answer and that their failure to respond to the motion may result in judgment being entered against them. A sample notice can be obtained from the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

#### **57.1 Declaratory Judgment.**

[Reserved.]



### **58.1 Entry of Judgment.**

(a) On the verdict of a jury or the decision by the Court, a separate document which shall constitute the judgment shall be signed by the Clerk and entered. The judgment shall contain no recitals other than a recital of the verdict or any direction by the Court on which the judgment is entered. Unless the Court specifically directs otherwise, the Clerk shall promptly prepare the judgment. The Clerk shall promptly sign and enter it, except that where the Court's approval is required by Fed. R. Civ. P. 58, the Clerk shall first submit the judgment to the Court, which shall manifest approval by signing it or noting approval on the margin. The notation of the judgment in the appropriate docket shall constitute the entry of judgment.

(b) The attorney causing the entry of an order or judgment shall append to, or endorse on, it a list of the names of the parties entitled to be notified of the entry and the names and addresses of their respective attorneys if known.

### **58.2 Entering Satisfaction of Judgment or Decree.**

The Clerk shall enter satisfaction of a money judgment recovered or registered in the district as follows:

- (a) Upon the payment into Court of the amount, plus applicable interest, and the payment of the marshal's fees, if any;
- (b) Upon the filing of a satisfaction-piece executed and acknowledged by:
  - 1. The judgment-creditor; or
  - 2. The judgment-creditor's legal representative or assigns, with evidence of the representative's authority; or
  - 3. The judgment-creditor's attorney or proctor, if within two years of the entry of the judgment or decree.
- (c) If the judgment-creditor is the United States, upon filing of a satisfaction-piece executed by the United States Attorney.
- (d) In admiralty, pursuant to an order of satisfaction; but an order shall not be made on the consent of the proctors only, unless consent is given within two years from the entry of the decree to be satisfied.
- (e) Upon the registration of a certified copy of a satisfaction entered in another district.

**59.1 New Trial; Amendment of Judgment.**

[Reserved.] See L.R. 7.1(g) (Motions for Reconsideration).

**60.1 Relief from Judgment or Order.**

[Reserved.]

**61.1 Harmless Error.**

[Reserved.]

**62.1 Stay of Proceedings.**

[Reserved.]

**62.2 Supersedeas Bond.**

See L.R. 67.1

**63.1 Disability of a Judge.**

[Reserved.]

## SECTION VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

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### **64.1 Seizure of Person or Property.**

The Court has adopted a Uniform Procedure for Civil Forfeiture Cases which is available from the Clerk's office or at the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

### **65.1 Injunctions.**

See L.R. 7.1(f).

#### **65.1.1 Sureties.**

(a) Whenever a bond, undertaking or stipulation is required, it shall be sufficient, except in bankruptcy or criminal cases, or as otherwise prescribed by law, if the instrument is executed by the surety or sureties only.

(b) Except as otherwise provided by law, every bond, undertaking or stipulation shall be secured by the deposit of cash or government bonds in the amount of the bond, undertaking or stipulation; or be secured by the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury; or the undertaking or guaranty of two individual residents of the Northern District of New York, each of whom owns real or personal property within the district worth double the amount of the bond, undertaking or stipulation, over all the debts and liabilities of each of the residents, and over all obligations assumed by each of the residents on other bonds, undertakings or stipulations, and exclusive of all legal exemptions.

(c) In the case of a bond or undertaking, or stipulation executed by individual sureties, each surety shall attach an affidavit of justification, giving full name, occupation, residence and business address and showing that the surety is qualified as an individual surety under subdivision (b) of this Rule.

(d) Members of the bar, administrative officers or employees of this Court, the Marshal, or the Marshal's deputies or assistants shall not act as sureties in any suit, action or proceeding pending in this Court. See L.R. 67.3.

## **65.2 Temporary Restraining Orders.**

See L.R. 7.1(f).

## **66.1 Receiverships.**

[Reserved.]

## **67.1 Deposits in Court.**

(a) A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment plus 11% to cover interest and any damage for delay as may be awarded, plus \$250 to cover costs.

When a stay shall be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the Court, on notice, shall fix the amount of the bond. In all other cases, the Court shall, on notice, grant a stay on the terms it deems proper.

On approval, a supersedeas bond shall be filed with the Clerk, and a copy thereof, with notice of filing, shall promptly be served upon all parties affected thereby. If the appellee raises objections to the form of the bond or to the sufficiency of the surety, the Court shall provide prompt notice of a hearing on such objections.

### **(b) Order Directing the Investment of Funds.**

Any order directing the Clerk to invest funds deposited with the registry account of the Court pursuant to 28 U.S.C. § 2041 shall include the following:

1. The amount to be invested; and
2. The type of interest-bearing account in which the funds are to be invested.

**(c) Time for Investing Funds.**

The Clerk shall take all reasonable steps to invest the funds within ten (10) days of the filing date of the order.

**(d) Fee.**

Unless the Court orders otherwise, the Clerk, at the time the income becomes available, shall deduct from the income earned on the investment a fee as authorized by the Judicial Conference of the United States and set out by the Director of the Administrative Office.

**67.2 Withdrawal of a Deposit Pursuant to Fed. R. Civ. P. 67.**

Any person seeking withdrawal of money deposited in the Court pursuant to Fed. R. Civ. P. 67 and subsequently deposited into an interest-bearing account or instrument as required by Fed. R. Civ. P. 67 shall provide a completed Internal Revenue Service Form W-9 with the motion papers seeking withdrawal of the funds.

**67.3 Bonds and Other Sureties.**

**(a) General Requirements.**

Unless the Court expressly directs otherwise pursuant to the provisions of 18 U.S.C. § 3146 in the supervision of a criminal matter, every bond, recognizance or other undertaking required by law or court order in any proceeding shall be executed by the principal obligor and by one or more sureties qualified as provided by this Rule.

**(b) Unacceptable Sureties.**

An attorney or the attorney's employee, a party to an action, or the spouse of a party to an action or of an attorney shall not be accepted as surety on a cost bond, bail bond, appeal bond, or any other bond.

**(c) Corporate Surety.**

A corporate surety on any undertaking in which the United States is the obligee shall be qualified in accordance with the provisions of 6 U.S.C. §§ 6-13, and approved thereunder by the Secretary of the Treasury of the United States. In all other instances, a corporate surety qualified to write bonds in the State of New York shall be an acceptable surety. In all actions, a power of attorney showing authority of the agent signing the bond shall be attached to the bond.

**(d) Personal Surety.**

Persons competent to convey real property who own real property in the State of New York of an unencumbered value of at least the stated penalty of the bond shall obtain consideration for qualification as surety thereon by attaching thereto a duly acknowledged justification showing (1) the legal description of the real property; (2) a complete list of all encumbrances and liens thereon;

(3) its market value based upon recent sales of like property; (4) a waiver of inchoate rights of any character and certification that the real property is not exempt from execution; and (5) certification as to the aggregate amount of penalties of all other existing undertakings, if any, assured by the bondsperson as of that date. The Court will review the justifications and certifications for approval or disapproval of the surety.

**(e) Cost Bonds.**

The Court on motion, or upon its own initiative, may order any party to file an original bond for costs or additional security for costs in such an amount and so conditioned as the court by its order shall designate.

**(f) Cash Bonds.**

Cash bonds shall be deposited into the Court's registry only upon execution and filing of a written bond sufficient as to form and setting forth the conditions of the bond. Withdrawal of cash bonds so deposited shall not be made except upon the Court's written order.

**(g) Insufficiency--Remedy.**

An opposing party may raise objections to a bond's form or timeliness or the sufficiency of the surety. If the bond is found to be insufficient, the Court shall order that a sufficient bond be filed within a stated time. If the order is not complied with, the case shall be dismissed for want of prosecution or the Court shall take other appropriate action as justice requires.

**68.1 Settlement Conferences.**

See L.R. 16.1.

**68.2 Settlement Procedures.**

**(a)** On notice to the Court or the Clerk that an action has been settled, and upon confirmation by all parties, the Court may issue a judgment dismissing the action by reason of settlement. The order shall be issued without prejudice to the right to secure reinstatement of the case within thirty (30) days after the date of judgment by making a showing that the settlement was not, in fact, consummated.

**(b)** If the Court decides not to follow the procedures set forth in L.R. 68.2(a), the parties shall file within thirty (30) days of the notification to the Court, unless otherwise directed by written order, such pleadings as are necessary to terminate the action. If the required documents are not filed within the thirty (30) day period, the Clerk shall place the action on the dismissal calendar.

See also L.R. 17.1 (Actions involving infants and/or incompetents).

**69.1 Execution.**

[Reserved.]

## **70.1 Judgment for Specific Acts; Vesting Title.**

[Reserved.]

## **71.1 Process in Behalf of and Against Persons Not Parties.**

[Reserved.]

## **71A.1 Condemnation Cases.**

[Reserved.]

## **72.1 Authority of Magistrate Judges**

(a) A full-time Magistrate Judge is authorized to exercise all powers and perform all duties permitted by 28 U.S.C. § 636(a), (b), and (c) and any additional duties that are consistent with the Constitution and laws of the United States. Part-time Magistrate Judges are authorized to exercise all of those duties, except that only Magistrate Judges specifically designated by the Court are authorized to perform duties allowed under 28 U.S.C. § 636(c) and any additional duty consistent with the Constitution and laws of the United States.

(b) Any party may file objections to a Magistrate Judge's determination of a non-dispositive matter by filing with the Clerk and serving upon all parties their objections. The objections must be filed and served within ten (10) days after being served with the Magistrate Judge's order, must state a return date in accordance with L.R. 7.1(b)(2) and must specifically designate the order or part of the order from which they seek relief and the basis for the objection. All supporting and opposition papers must be filed in accordance with L.R. 7.1(b)(2). The supporting papers shall include the following documents:

1. A designation of the contents of the record on appeal, including the documents, exhibits and other materials to be considered; and
2. A memorandum of law.

Opposition papers shall also include a memorandum of law responsive to the appellant's arguments. Appeals will be decided on submission of the papers without oral argument unless the Court directs otherwise.

(c) Any party may object to a Magistrate Judge's proposed findings, recommendations, or report issued pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) within ten (10) days after being served with a copy of the Magistrate Judge's recommendation. The party must file with the Clerk and serve upon all parties written objections which specifically identify the portions of the proposed findings, recommendations, or report to which objection is made and the basis for the objection. The party shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which objection is made. Objections may not exceed twenty-five (25) pages without the Court's prior approval. Response to the objections may be filed and served within ten (10) days after being served with a copy of the objections. Replies by the objecting party are not permitted. The Court will proceed in accordance with Fed. R. Civ. P. 72(b) or Rule 8(b) of the Rules Governing Section 2254 Petitions, as applicable.

## **72.2 Duties of Magistrate Judges.**

(a) In all civil cases, in accordance with Fed. R. Civ. P. 16, the Magistrate Judge assigned pursuant to L.R. 40.1 is authorized to hold conferences before trial, enter scheduling orders, and modify scheduling orders. The scheduling order may limit the time to join parties, amend pleadings, file and hear motions, and complete discovery. It may also include dates for a final pretrial conference and other conferences, a trial ready date, a trial date, and any other matters appropriate under the circumstances of the case. A schedule cannot be modified except by order of the Court. The Magistrate Judge may explore the possibility of settlement and hold settlement conferences.

(b) The following procedure will be followed regarding consent of the parties and designation of a Magistrate Judge to exercise civil trial jurisdiction under 28 U.S.C. § 636(c):

1. Upon the filing of a complaint or petition for removal, the Clerk shall promptly provide to the plaintiff, or the plaintiff's attorney, a notice, as approved by the Court, informing the parties of their right to consent to have the full-time Magistrate Judge conduct all proceedings in the case. Proceedings in the case include hearing and determining all pretrial and post-trial motions, including dispositive motions; conducting a jury or non-jury trial; and ordering the entry of a final judgment. Copies of the notice shall be attached to the copies of the complaint and summons when served. Additional copies of the notice shall be furnished to the parties at later stages of the proceedings and shall be included with pretrial notices and instructions. The consent form will state that any appeal lies directly with the Court of Appeals for the Second Circuit.
2. If the parties agree to consent, the attorney for each party or the party, if pro se, must execute the consent form. Executed consent forms shall be filed directly with the Clerk. No consent form shall be made available, nor shall its contents be made known, to any District Judge or Magistrate Judge, unless all of the parties have executed the consent form. No judge or other court official shall attempt to persuade or induce any party to consent to the reference of any matter to a Magistrate Judge. A District Judge, Magistrate Judge, or other court official may again inform or remind the parties that they have the option of referring the case to a Magistrate Judge. In reminding the parties about the availability of consent to a Magistrate Judge, the parties must be informed that they are free to withhold consent without adverse substantive consequences. The parties may agree to a Magistrate Judge's exercise of civil jurisdiction at any time prior to trial, subject to the approval of the District Judge.
3. When all of the parties have executed and filed the consent forms, the Clerk shall then transmit them along with the file to the assigned District Judge for approval and referral of the case to a Magistrate Judge. If the District Judge assigns the case to a Magistrate Judge on consent, authority vests in the Magistrate Judge to conduct all proceedings and to direct the Clerk to enter a final judgment in the same manner as if a District Judge presided over the case.
4. The Clerk shall notify any parties added to an action after consent and reference to a Magistrate Judge of their right to consent to the exercise of jurisdiction by the Magistrate Judge. If an added party does not consent to the Magistrate Judge's jurisdiction, the action shall be returned to the referring District Judge for further proceedings.



**(c) Assignment of Magistrate Judges to Serve as Special Masters.**

A Magistrate Judge shall serve as a special master subject to the procedures and limitations of 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. Where the parties consent, a Magistrate Judge shall serve as a special master in any civil case without regard to the provisions of Fed. R. Civ. P. 53(b).

**(d) Other Duties in Civil Actions.**

A magistrate judge is also authorized to:

1. Conduct proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, as amended, in accordance with 46 U.S.C. § 4311(d), 12309(c);
2. Conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;
3. Review petitions in civil commitment proceedings under Title III of the Narcotic Rehabilitation Act;
4. Supervise proceedings conducted pursuant to letters rogatory in accordance with 28 U.S.C. § 1782;
5. Exercise general supervision of the Court's civil calendar, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges; and
6. Administer oaths and affirmations and take acknowledgments, affidavits, and depositions.

**72.3 Assignment of Duties to Magistrate Judges.**

**(a)** Upon filing of the complaint, the Clerk shall assign the case to a District Judge and a Magistrate Judge. See L.R. 40.1

**(b)** All civil cases in which consent forms have been executed and filed pursuant to 28 U.S.C. § 636(c) and L.R. 72.2(b) shall be transmitted to the judge to whom the case has been assigned for approval and referral of the case to a Magistrate Judge, who shall then have the authority to conduct all proceedings and to direct the Clerk to enter a final judgment. See L.R. 72.2(b)(3)

**(c) Prisoner Cases.**

Proceedings commenced by an unrepresented prisoner shall, unless the Court orders otherwise, be referred to a Magistrate Judge for the purpose of reviewing applications, petitions and motions in accordance with these Rules and 28 U.S.C. § 636.

**(d) Social Security Appeal Cases.**

Upon the filing of the complaint, social security appeal cases shall be assigned in rotation to the active district judges. These cases shall be referred immediately in rotation to a full-time magistrate judge for the purpose of review and submission of a report-recommendation relative to the complaint or, if the Magistrate Judge has been assigned to the case pursuant to 28 U.S.C. § 636(c) and L.R. 72.2(b), for final judgment.

**(e) Federal Debt Collection Act Cases.**

1. Any action brought pursuant to the Federal Debt Collection Act, 28 U.S.C. § 3001 *et seq.*, shall be handled on an expedited basis and brought before a Magistrate Judge in Syracuse, New York, or to a District Judge if no Magistrate Judge is available, for an initial determination.
2. If appropriate, an order shall be issued directing the Clerk to issue the writ being sought, except that an application under 28 U.S.C. § 3203 for a writ of execution in a post-judgment proceeding shall not require an order of the Court.
3. Thereafter, the Clerk is directed to assign geographically a Magistrate Judge if none was previously assigned in accordance with General Order #12.
4. The assigned Magistrate Judge shall conduct any hearing that may be requested, decide all non-dispositive issues, and issue a report-recommendation on any and all dispositive issues.
5. The parties shall file written objections to the report-recommendation within twenty (20) days of the filing of same. Without oral argument, the assigned District Judge shall review the report-recommendation along with any objections that have been filed.
6. On the request for a hearing, the Clerk shall make a good faith effort to schedule the hearing within five (5) days of the receipt of the request or "as soon after that as possible," pursuant to 28 U.S.C. § 3101(d)(1).

**72.4 Habeas Corpus.**

**(a)** Petitions under 28 U.S.C. §§ 2241, 2254 and 2255 shall be filed pursuant to the Rules Governing § 2254 Cases in the United States District Courts and the Rules Governing § 2255 Proceedings in the United States District Courts.

**(b)** Subject to the requirement of subsection (c), the original verified petition shall be filed with the Clerk at Syracuse, New York. Applications for a writ of habeas corpus made by persons in custody shall be filed, heard and determined in the district court for the district within which they were convicted and sentenced provided, however, that if the convenience of the parties and witnesses requires a hearing in a different district, such application shall be transferred to any district that the assigned judge finds or determines to be more convenient.

(c) Before a second or successive application is filed in this Court, the applicant shall move in the Second Circuit Court of Appeals for an order authorizing the district court to consider the application.

(d) If state court records are to be submitted with respondent's answer to the petition, the records must be properly identified in the answer and arranged in chronological order. The pages of the state court records must be sequentially numbered so that citations to those records will identify the exact location where the information appears. If documents are separately bound and the citation to the documents is easily identifiable, the documents need not be repaginated.

## **72.5 Habeas Corpus Petitions Involving the Death Penalty: Special Requirements.**

### **(a) Applicability.**

This Rule shall govern the procedures for a first petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 in which a petitioner seeks relief from a judgment imposing the penalty of death. A subsequent filing relating to a particular petition may be deemed a first petition under this Rule if the original filing was not dismissed on the merits. The District Judge or Magistrate Judge to whom the petition is assigned may modify the application of this Rule. This Rule shall supplement the Rules Governing § 2254 Cases and does not in any regard alter or supplant those rules.

### **(b) Notices From Office of the Attorney General for the State of New York.**

The Office of the Attorney General for the State of New York ("Attorney General") shall send to the Clerk (1) prompt notice whenever the New York State Court of Appeals affirms a sentence of death; (2) at least once a month, a list of scheduled executions; and (3) at least once a month, a list of the death penalty appeals pending before the New York State Court of Appeals.

### **(c) Notice From Petitioner's Counsel.**

Whenever counsel determines that a petition will be filed in this Court, counsel shall promptly file with the Clerk and serve on the Attorney General a written notice of counsel's intention to file a petition. The notice shall state the name of the petitioner, the district in which the petitioner was convicted, the place of the petitioner's incarceration, the status of the petitioner's state court proceedings and the scheduled date of execution. The notice is for the Court's information only and the failure to file the notice shall not preclude the filing of the petition.

### **(d) Counsel.**

#### **1. Appointment of Counsel.**

Each indigent petitioner shall be represented by counsel unless petitioner has clearly elected to proceed pro se and the Court is satisfied, after a hearing, that petitioner's election is intelligent, competent, and voluntary. Where counsel is to be appointed, such appointment shall be made at the earliest practicable time. A panel of attorneys qualified for appointment in death penalty cases ("qualified panel") will be certified by the active judges of this district.

If state appellate counsel is available to continue representation into the federal courts and counsel is deemed qualified to do so by the assigned District Judge, there is a presumption in favor of continued representation except when state appellate counsel was also counsel at trial. In light of this presumption, it is expected that appointed counsel who is willing to continue representation and who has been certified by the assigned District Judge as qualified to do so, would ordinarily file a motion for appointment of counsel on behalf of his or her client together with the client's federal habeas corpus petition. If, however, counsel for any reason wishes to confirm appointment before preparing the petition, counsel may move for appointment as described above before filing the petition.

If state appellate counsel is not available to represent the petitioner on federal habeas corpus or if appointment of state appellate counsel would be inappropriate for any reason, the Court may appoint counsel upon application of the petitioner. The Clerk shall have available forms for such application. Counsel may be appointed from the qualified panel. The assigned District Judge may suggest one or more counsel for appointment. If application for appointed counsel is made before a petition is filed, the application shall be assigned to a District Judge and Magistrate Judge in the same manner that a non-capital petition would be assigned. The District Judge and Magistrate Judge so assigned shall be the District Judge and Magistrate Judge assigned when counsel files a petition for writ of habeas corpus.

## **2. Second Counsel.**

Appointment and compensation of second counsel shall be governed by the Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases.

### **(e) Filing.**

#### **1. General requirement.**

Petitions as to which venue lies in this district shall be filed in accordance with the applicable Local Rules. Petitions shall be filled in by printing or typewriting. In the alternative, the petition may be in a legible typewritten or written form which contains all of the information required by that form. All petitions shall (1) state whether the petitioner has previously sought relief arising out of the same matter from this Court or any other federal court, together with the ruling and reasons given for denial of relief; (2) set forth any scheduled execution date; and (3) contain the wording in full caps and underscored "Death Penalty Case" directly under the case number on each pleading. Counsel for petitioner shall file an original and three (3) copies of the petition. A *pro se* petitioner need file only the original.

The Clerk will immediately notify the Attorney General's office when a petition is filed.

When a petitioner who was convicted outside of this district files a petition, the Court will immediately advise the clerk of the district in which the petitioner was convicted.

## **2. Emergency motions or applications.**

Emergency motions or applications shall be filed with the Clerk. If time does not permit the filing of a motion or application in person or by mail, counsel may communicate with the Clerk and obtain the Clerk's permission to file the motion by facsimile. Counsel should communicate with the Clerk by telephone as soon as it becomes evident that emergency relief will be sought from this Court. The motion or application shall contain a brief account of the prior actions, if any, of this Court and the name of the judge or judges involved in the prior actions.

### **(f) Assignment to Judicial Officers.**

Notwithstanding the Court's case assignment plan, petitions shall be assigned to judges of the Court as follows: (1) the Clerk shall establish a separate category for these petitions, to be designated with the title "Capital Case"; (2) all active judges of this Court shall participate in the assignments; (3) the Clerk shall assign petitions in the Capital Case category randomly to each of the available active judges of the Court; (4) if a petitioner has previously sought relief in this Court with respect to the same conviction, the petition shall, when practical, be assigned to the judicial officers who were assigned to the prior proceeding; and (5) pursuant to 28 U.S.C. § 636(b)(1)(B), and consistent with law, the Court may designate Magistrate Judges to perform all duties under this Rule, including evidentiary hearings.

### **(g) Transfer of Venue.**

Subject to the provisions of 28 U.S.C. § 2241(d), it is the Court's policy that a petition should be heard in the district in which the petitioner was convicted rather than in the district of the petitioner's present confinement. See L.R. 72.4(b). If an order for the transfer of venue is made, the Court will order a stay of execution which shall continue until such time as the transferee court acts upon the petition or the order of stay.

### **(h) Stays of Execution.**

#### **1. Stay Pending Final Disposition.**

Upon the filing of a habeas corpus petition, unless the petition is patently frivolous, the Court shall issue a stay of execution pending final disposition of the matter. Notwithstanding any provision of this paragraph (h), stays of execution shall not be granted, or maintained, except in accordance with law. Thus, the provisions of this paragraph (h) for a stay shall be ineffective in any case in which the stay would be inconsistent with the limitations of 28 U.S.C. § 2262 or any other governing statute.

#### **2. Temporary Stay for Appointment of Counsel.**

Where counsel in state court proceedings withdraws at the conclusion of the state court proceedings or is otherwise not available or qualified to proceed, the Court may designate an attorney who will assist an indigent petitioner in filing *pro se* applications for appointment of counsel and for a temporary stay of execution. Upon the filing of this application, the Court shall issue a temporary stay of execution and appoint counsel. The temporary stay will remain in effect for forty-five (45) days unless the Court extends this time.

### **3. Temporary Stay for Preparation of the Petition.**

Where counsel new to the case is appointed, upon counsel's application for a temporary stay of execution accompanied by a specification of nonfrivolous issues to be raised in the petition, the Court shall issue a temporary stay of execution unless no nonfrivolous issues are presented. The temporary stay will remain in effect for one hundred twenty (120) days to allow newly appointed counsel to prepare and file the petition. The Court may extend the temporary stay upon a subsequent showing of good cause.

### **4. Temporary Stay for Transfer of Venue.      See paragraph (g).**

### **5. Temporary Stay for Unexhausted Claims.**

If the petition indicates that there are unexhausted claims for which a state court remedy is still available, the petitioner will be granted a sixty (60) day stay of execution in which to seek a further stay from the state court in order to litigate the unexhausted claims in state court. During the proceedings in state court, the proceedings on the petition will be stayed. After the state court proceedings have been completed, the petitioner may amend the petition with respect to the newly exhausted claims.

### **6. Stay Pending Appeal.**

If the petition is denied and a certificate of appealability for appeal is issued, the Court will grant a stay of execution which will continue in effect until the court of appeals acts upon the appeal or the order of stay.

### **7. Notice of Stay.**

Upon the granting of any stay of execution, the Clerk will immediately notify the appropriate prison superintendent and the Attorney General. The Attorney General shall ensure that the Clerk has a twenty-four (24) hour telephone number for the superintendent.

#### **(i) Procedures for Considering the Petition.**

Unless the Court summarily dismisses the petition as patently frivolous, the following schedule and procedures shall apply subject to modification by the court. Requests for enlargement of any time period in this Rule shall comply with these Local Rules.

**1.** Respondent shall, as soon as practicable, but in any event on or before twenty (20) days from the date of service of the petition, file with the Court the following:

- (A)** Transcripts of the state trial court proceedings;
- (B)** Appellant's and respondent's briefs on direct appeal to the Court of Appeals, and the opinion or orders of that Court;
- (C)** Petitioner's and respondent's briefs in any state court habeas corpus proceedings, and all opinions, orders and transcripts of such proceedings;
- (D)** Copies of all pleadings, opinions and orders in any previous federal habeas corpus proceeding filed by petitioner which arose from the same conviction; and
- (E)** An index of all materials described in paragraphs (A) through (D) above.

The materials are to be marked and numbered so that they can be uniformly cited. Respondent shall serve this index upon counsel for petitioner or the petitioner *pro se*. If time does not permit, the answer may be filed without attachments (A) through (D) above, but the respondent shall file the necessary copies as soon as possible. If any items identified in paragraphs (A) through (D) above are not available, respondent shall state when, if at all, such missing material can be filed.

2. If counsel for petitioner claims that respondent has not complied with the requirements of paragraph (1), or if counsel for petitioner does not have copies of all the documents filed with the court by respondent, counsel for petitioner shall immediately notify the Court in writing, with a copy to respondent. The Court will provide copies of any missing documents to the petitioner's counsel.

3. Respondent shall file an answer to the petition with accompanying points and authorities within thirty (30) days from the date of service of the petition. Respondent shall attach any other relevant documents not already filed.

4. Within thirty (30) days after respondent has filed the answer, petitioner may file a traverse.

5. There shall be no discovery without leave of the Court.

6. Any request for an evidentiary hearing by either party shall be made within fifteen (15) days from the filing of the traverse or within fifteen (15) days from the expiration of the time for filing the traverse. The request shall include a specification of which factual issues require a hearing and a summary of what evidence petitioner proposes to offer. Any opposition to the request for an evidentiary hearing shall be made within fifteen (15) days from the filing of the request. The Court will then give due consideration to whether an evidentiary hearing will be held.

**(j) Evidentiary Hearing.**

If an evidentiary hearing is held, the Court will order the preparation of a transcript of the hearing, which is to be immediately provided to petitioner and respondent for use in briefing and argument. Upon the preparation of the transcript, the Court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

**(k) Rulings.**

The Court's rulings may be in the form of a written opinion, which will be filed, or in the form of an oral opinion on the record in open court, which shall be promptly transcribed and filed. The Clerk will immediately notify the appropriate prison superintendent and the Attorney General whenever relief is granted on a petition. The Clerk will immediately notify the clerk of the United States Court of Appeals for the Second Circuit by telephone of (1) the issuance of a final order denying or dismissing a petition without a certificate of probable cause for appeal or (2) the denial of a stay of execution. When a notice of appeal is filed, the Clerk will transmit the appropriate documents to the United States Court of Appeals for the Second Circuit immediately.

### **73.1 Magistrate Judges: Trial by Consent.**

Upon the consent of the parties, a Magistrate Judge shall conduct all proceedings in any civil case, including a jury or non-jury trial and shall order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). See L.R. 72.2(b)(2)

### **74.1 Method of Appeal to District Judge in Consent Cases.**

[Reserved.]

### **75.1 Proceedings on Appeal from Magistrate Judge to District Judge under Rule 73(d).**

[Reserved.]

### **76.1 Bankruptcy Cases.**

**(a) Reference to Bankruptcy Court.** All cases under Title 11 of the United States Code, and all proceedings arising under Title 11, or arising in, or related to, a case under Title 11, are referred to the bankruptcy court of this district pursuant to Title 28 U.S.C. § 157.

### **76.2 Bankruptcy Appeals.**

**(a)** When a notice of appeal is filed with the bankruptcy court clerk, and the notice is not timely filed in accordance with Fed. R. Bankr. P. 8002(a), and no motion for extension of time has been filed in accordance with Fed. R. Bankr. P. 8002(c), the bankruptcy court clerk shall forward the notice of appeal together with a "Certification of Noncompliance" to the Clerk without assembling the record as provided for in Fed. R. Bankr. P. 8007(b). The notice and certificate shall be filed, assigned a civil action number, and forwarded to a District Judge for a determination as to whether the notice of appeal was timely filed or the appeal is to be dismissed as untimely. If the District Judge makes a determination that the appeal was timely filed or should otherwise be perfected, the bankruptcy court clerk shall be notified to complete the record promptly in accordance with Fed. R. Bankr. P. 8007(b).

**(b)** The Clerk shall issue a standard bankruptcy appeal scheduling order at the time of the filing of the record on appeal, a copy of which shall be provided to the parties, the bankruptcy judge from whom the appeal was taken, and the bankruptcy court clerk.

**(c)** Appeals from a decision of the bankruptcy court shall be in accordance with 28 U.S.C. § 158 and applicable bankruptcy rules. Fed. R. Bankr. P. 8009 respecting the filing of briefs shall not be applicable, and briefs shall be filed in accordance with the scheduling order of this Court.



**76.3 Bankruptcy Record of Transmittal, Certificate of Facts, and Proposed Findings Pursuant to Title 11, Section 110(i)**

(a) Upon direction of the bankruptcy judge, the bankruptcy court clerk shall cause to be filed with the Clerk the designated record of transmittal, which shall consist of certified copies of the Memorandum-Decision, Findings of Fact, Conclusions of Law, bankruptcy docket, and transcript of proceedings which relate to the bankruptcy judge's findings. The bankruptcy court clerk shall also provide the Clerk with a list of those individuals to whom the notice of filing shall be given.

(b) Upon receipt of the above, the Clerk shall assign a civil action number, assign a District Judge and issue a scheduling order for the filing of motions pursuant to Title 11, Section 110(i)(1). Copies of the scheduling order shall be served upon those individuals designated by the bankruptcy court clerk.

Upon the filing of any motion(s), the Clerk shall schedule and notice all concerned parties of a hearing date. Failure to file motions within the time ordered will be deemed a waiver of the provisions of Title 11, Section 110(i)(1). The Clerk shall prepare and present to the assigned District Judge a proposed order pursuant to the provisions of L. R. 41.2.

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### **77.1 Hours of Court.**

[Reserved.]

### **77.2 Orders.**

(a) With these exceptions, all orders, whether by consent or otherwise, shall be presented for approval and execution to the assigned judge. The Clerk may sign without submission to the assigned judge the following orders:

1. Orders specifically appointing persons to serve process in accordance with Fed. R. Civ. P. 4;
2. Orders on consent for the substitution of attorneys in civil cases where the trial of the action has not been set. See also L.R. 83.2;
3. Orders restoring an action to the court docket after the filing of a demand for trial de novo pursuant to L.R. 83.7-7 (Consensual Arbitration Program);
4. Orders on consent satisfying decrees and orders on consent canceling stipulations and bonds.

(b) If instructed to do so by the assigned judge, the prevailing party shall submit a proposed order which has been approved by the opposing party and which contains the endorsement of the opposing party: "Approved as to form."

When the parties are unable to agree as to the form of the proposed order, the prevailing party shall, on three (3) days notice to all other parties, submit a proposed order and a written explanation for the form of that order. Costs and attorneys' fees may be awarded against a party whose unreasonable conduct is deemed to have required the bringing of the motion. The provisions of L.R. 7.1 shall not apply to such motion and oral argument shall not be heard.

### **77.3 Sessions of Court.**

The Court shall be in continuous session in Albany, Binghamton, Syracuse, and Utica. Sessions shall from time to time be held in Auburn, Malone and Watertown, or such other place as the Court shall, by order, deem appropriate. Jurors shall serve as the Court directs.

### **77.4 Court Library.**

The district court libraries are not open for use by the public.

### **77.5 Official Newspapers.**

All process, notices, and orders required to be published shall be published in the proper county in an official newspaper. The Court shall direct the publication of process, notices, and orders in any other newspaper, upon proper showing, as it shall deem advisable. The following are designated as official newspapers:

<b>County</b>	<b>Newspaper</b>	<b>City</b>
Albany	Times Union (D)	Albany, NY
Broome	Binghamton Press/Sun Bulletin (D)	Binghamton, NY
Cayuga	The Citizen (D)	Auburn, NY
Clinton	Press-Republican (D)	Plattsburgh, NY
Chenango	Evening Sun (D)	Norwich, NY
Columbia	Register Star (D)	Hudson, NY
	The Independent (W)	Hillsdale, NY
Cortland	Cortland Standard (D)	Cortland, NY
Delaware	Walton Reporter (W)	Walton, NY
Essex	Lake Placid News (W)	Lake Placid, NY
Franklin	Adirondack Enterprise (D)	Saranac Lake, NY
Fulton	Leader Herald (D)	Gloversville, NY
Greene	Catskill Daily Mail (D)	Catskill, NY
Hamilton	Post Star (D)	Glens Falls, NY
Herkimer	Telegram (D)	Herkimer, NY
	The Evening Times (D)	Little Falls, NY
	Watertown Times (D)	Watertown, NY
Jefferson	Thousand Island Sun (W)	Alexandria Bay, NY

<b>County</b>	<b>Newspaper</b>	<b>City</b>
Lewis	Journal Republican (W)	Lowville, NY
Madison	Oneida Dispatch (D)	Oneida, NY
Montgomery	The Recorder (D)	Amsterdam, NY
Oneida	Utica Observer Dispatch (D)	Utica, NY
	Rome Sentinal (D)	Rome, NY
Onondaga	Post Standard (D)	Syracuse, NY
Oswego	Palladium Times (D)	Oswego, NY
Otsego	The Daily Star	Oneonta, NY
Rensselaer	Times Record (D)	Troy, NY
St. Lawrence	Ogdensburg Journal (D)	Ogdensburg, NY
	Tribune Press (W)	Gouverneur, NY
	Daily Courier Observer (D)	Massena, NY
Saratoga	Saratogian-Tri City News (D)	Saratoga Springs, NY
Schenectady	Schenectady Gazette (D)	Schenectady, NY
Schoharie	Times Journal (W)	Cobleskill, NY
Tioga	Owego Pennysaver (W)	Owego, NY
Tompkins	Ithaca Journal (D)	Ithaca, NY
Ulster	The Daily Freeman (D)	Kingston, NY
Warren	Post Star (D)	Glen Falls, NY
	Times (D)	Glen Falls, NY
Washington	Whitehall Times (W)	Whitehall, NY

(D) = Daily                      (W) = Weekly

#### **77.6 Release of Information.**

All court personnel, including but not limited to marshals, deputy clerks, court clerks, bailiffs, court reporters, law clerks, secretaries, and probation officers, shall not disclose to any person, without the Court's authorization, information divulged in arguments and hearings held in chambers or otherwise outside the presence of the public or any information relating to a pending case that is not part of the Court's public records.

#### **77.7 Official Station of the Clerk.**

The Clerk's official station shall be Syracuse. The Clerk shall appoint deputy clerks in such number as are necessary and shall be stationed at Albany, Binghamton, Utica, Syracuse and Watertown.

#### **78.1 Motion Days.**

Listings of the regularly scheduled motion days for all judges shall be available at each Clerk's office and are available on the Court's webpage at "www.nynd.uscourts.gov." Notice of the regular motion days for all judges shall be provided at the time an action is commenced.

#### **79.1 Custody of Exhibits and Transcripts.**

(a) Unless the Court orders otherwise, exhibits and transcripts shall not be filed with the Clerk. Rather, they shall be retained in the custody of the attorney who produced them in court.

(b) In the case of an appeal or other review by an appellate court, the parties are encouraged to agree with respect to which exhibits and transcripts are necessary for the determination of the appeal. In the absence of agreement and except as provided in this Rule, a party, upon written request of any other party or by Court order, shall make available at the Clerk's office all the original exhibits in the party's possession, or true copies, to enable such other party to prepare the record on appeal. At the same time and place, such other party also shall make available all the original exhibits in that party's possession. All exhibits made available at the Clerk's office, which are designated by any party as part of the record on appeal, shall be filed with the Clerk, who shall transmit them together with the record on appeal to the clerk of the Second Circuit Court of Appeals. Exhibits and transcripts not so designated shall remain in the custody of the respective attorneys who shall have the responsibility of promptly forwarding them to the clerk of the Second Circuit Court of Appeals on request.

(c) Documents of unusual bulk or weight and physical exhibits, other than documents, shall remain in the custody of the attorney producing them, who shall permit their inspection by any party for the purpose of preparing the record on appeal and who shall be charged with the responsibility for their safekeeping and transportation to the Second Circuit Court of Appeals.

(d) Exhibits and transcripts which have been filed with the Clerk shall be removed by the party responsible for them (1) if no appeal is taken, within ninety (90) days after a final decision is rendered or (2) if an appeal has been taken, within thirty (30) days after the mandate of the final reviewing court is filed. The Clerk shall notify the parties that fail to comply with this Rule to remove their exhibits. Upon their failure to do so within thirty (30) days, the Clerk shall dispose of them as the Clerk sees fit.

## **79.2 Books and Records of the Clerk.**

[Reserved.]

## **80.1 Stenographic Transcript: Court Reporting Fees.**

Subject to the provisions of Fed. R. Civ. P. 54(d), the expense of any party in obtaining all or any part of a transcript for the Court's use when the Court so orders and the expense of any party in obtaining all or any part of a transcript for the purposes of a new trial or for amended findings or for appeals shall be a taxable cost against the unsuccessful party. A fee schedule of transcript rates is available on the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

## **81.1 Removal Bonds.**

[Reserved.]

## **81.2 Copies of State Court Proceedings in Removed Actions.**

[Reserved.]

### **81.3 Removed Cases, Demand for Jury Trial.**

In an action removed from a state court, a party entitled to trial by jury under Fed. R. Civ. P. 38 shall be accorded a jury trial if a demand is filed and served in accordance with the provisions of Fed. R. Civ. P. 81 and L.R. 38.1.

### **81.4 Actions Removed Pursuant to 28 U.S.C. § 1452.**

If removal is based upon 28 U.S.C. § 1452 (Removal of claims related to bankruptcy cases), the removing party shall specifically identify in its Notice of Removal which claims or causes of action it is removing and which of the parties in the state court action are parties to the removed claims or causes of action.

### **82.1 Jurisdiction and Venue Unaffected.**

[Reserved.]

### **83.1 Admission to the Bar.**

**(a) Permanent Admission.** A member in good standing of the bar of the State of New York or of the bar of any United States District Court, whose professional character is good, may be permanently admitted to practice in this court on motion of a member of the bar of this Court in compliance with the requirements of this Rule. **An admission packet containing all the required forms is available from the Clerk's office and on the Court's webpage at "www.nynd.uscourts.gov."**

Each applicant for permanent admission must file, at least ten (10) days prior to the scheduled hearing (unless, for good cause shown, the Court shortens the time), documentation for admission as set forth below. Ordinarily, the Court entertains applications for admission only on regularly scheduled motion days. Documentation required for permanent admission includes:

**1. A verified petition for admission** stating the following:

- place of residence and office address;
- the date(s) when and court(s) where previously admitted;
- legal training and trial experience;
- whether the applicant has ever been held in contempt of court, censured, suspended or disbarred by any court and, if so, the facts and circumstances connected therewith; and
- that the applicant is familiar with the provisions of the Judicial Code (Title 28 U.S.C.), which pertain to the jurisdiction of, and practice in, the United States District Courts; the Federal Rules of Civil Procedure and the Federal Rules of Evidence for the District Courts; the Federal Rules of Criminal Procedure for the District Courts; the Local Rules of the District Court for the Northern District of New York; and the N.Y.S. Lawyer's Code of Professional Responsibility. The applicant shall further affirm faithful adherence to these Rules and responsibilities.

2. **Affidavit of Sponsor.** The sponsor must be a member in good standing of the bar of the Northern District of New York who has personal knowledge of the petitioner's background and character. A form Affidavit of Sponsor is available from the Clerk's office.
3. **Attorney Registration Form.** The Registration Form must be in the form prescribed by the Clerk, which sets forth the attorney's current residence; office addresses; telephone and fax number(s), if any, and e-mail address; and the bars of all states, territories, districts, commonwealths or possessions or other courts of the United States to which the attorney is admitted and the dates of admission. A copy of the Attorney Registration Form is available on the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)." See subdivision (e) for requirements when information on the Registration Form changes.
4. **Certificate of Good Standing.** The certificate of good standing must be dated within six (6) months of the date of admission.
5. **The Required Fee.** As prescribed by and pursuant to the Judicial Conference of the United States and the Rules of this Court, the fee for admission to the bar is **\$80.00 (\$50.00 and an additional fee of \$30.00).**

In addition to the initial admission fee, there shall be a **\$30.00** biennial registration fee. This fee shall be due and owing on **June 1<sup>st</sup>, 2001** and every two years thereafter unless deferred by the Board of Judges. Failure to remit this fee will result in the removal of the non-paying attorney from the court's bar roll. Should the payment of this biennial fee present a significant financial hardship, an attorney may request, via an application to the Chief Judge, that the biennial registration fee be waived.

The Clerk shall deposit the additional **\$30.00** fee required for admission to the bar and the **\$30.00** biennial registration fee into the District Court Fund. The Clerk shall be the trustee of the Fund, and the monies deposited in the Fund shall be used only for the benefit of the bench and bar in the administration of justice. All withdrawals from the Fund require the approval of the Chief Judge or a judge designated by the Chief Judge to authorize the withdrawals.

The admission fees and biennial registration fees are waived for all attorneys in the employ of the United States Government.

The biennial registration fees **only** are waived for all attorneys employed by state and local public sector entities.

6. **Oath on Admission.** An applicant must swear or affirm that as an attorney and counselor of this Court the applicant will conduct himself or herself uprightly and according to law, and that he or she will support the Constitution of the United States. The Oath on Admission, form AO 153, is signed in court at the time of the admission.

(b) Applicants who are not admitted to another United States District Court in New York State must appear with their sponsor for formal admission unless such appearance is waived in the exercise of judicial discretion. If the applicant is admitted to practice in New York State, the Certificate of Good Standing submitted with the application for admission must be from the appropriate New York State Appellate Division. All requirements of subdivision (a) apply.

If the applicant is from outside New York State, the Certificate of Good Standing may be from the highest court of the state or from a United States District Court. All requirements of subdivision (a) apply. Out-of-state applicants must maintain an office in the state in which the applicant is admitted. Upon ceasing to maintain an office in that state, the attorney automatically ceases to be a member of the bar of this Court.

(c) Applicants who are members in good standing of a United States District Court for the Eastern, Western, or Southern District of New York need not appear for formal admission. The applicant must submit a Certificate of Good Standing from the United States District Court where the applicant is a member and a proposed order granting the admission. A sponsor's affidavit is not required. All other requirements of subdivision (a) apply.

(d) **Pro Hac Vice Admission.** A member in good standing of the bar of any state, or of any United States District Court, may be admitted *pro hac vice* to argue or try a particular case in whole or in part. In addition to the requirements of L.R. 83.1(a)(1)(3) and (4), a Motion for Pro Hac Vice Admission must be made, which includes the case caption of the particular case for which the admission is being sought. See L.R. 10.1(b). In lieu of a written motion for admission, an oral motion may be made by the sponsoring attorney in open court on the record. In that case, the attorney must immediately complete and file the required documents as set forth above.

The *pro hac vice* admission fee is **\$30.00**. The Clerk deposits all *pro hac vice* admission fees into the District Court Fund. See L.R. 83.1(a)(5). While an attorney may be admitted *pro hac vice* in connection with a particular case, only an attorney permanently admitted to practice in this Court may enter appearances for parties, sign stipulations, or receive payments on judgments, decrees or orders. An attorney admitted *pro hac vice* must file a written notice of appearance in the case for which the attorney was admitted in accordance with L.R. 83.2.

(e) **Registration Form Changes.** Every attorney must file a supplemental statement setting forth any change in the information on the Registration Form within ten (10) days of the change. This supplemental statement should be made by filing a new Registration Form which reflects the new information and which identifies which information changed. Failure to timely file a supplemental Registration Form may result in inability to notify that attorney of developments in the case or other sanctions in the Court's discretion. See L.R. 41.2(b). A copy of the Attorney Registration Form is available on the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

(f) **Pro Bono Service.** Every member of the bar of this Court shall be available upon the Court's request for appointment to represent or assist in the representation of indigent parties. Appointments under this Rule shall be made in a manner such that no attorney shall be requested to accept more than one appointment during any twelve-month period.



**(g) United States Attorney's Office.** An attorney appointed by the United States Attorney General as a United States Attorney, an assistant United States attorney, or as a special assistant United States attorney under 28 U.S.C. §§ 541-543, who has been admitted to practice before any United States District Court, shall be admitted to practice in this Court upon motion of a member of the bar of this Court. Thereafter, the attorney may appear before this Court on any matter on behalf of the United States.

### **83.2 Appearance and Withdrawal of Attorney.**

**(a) Appearance.** An attorney appearing for a party in a civil case shall promptly file with the Clerk a written notice of appearance, however no notice of appearance needs to be filed if the party that would be filing the notice of appearance is the same individual that has signed the complaint, notice of removal, pre-answer motion, or answer.

**(b) Withdrawal.** An attorney who has appeared may withdraw only upon notice to the client and all parties to the case and an order of the Court, upon a finding of good cause, granting leave to withdraw. If leave to withdraw is granted, the withdrawing attorney must serve a copy of the order upon the affected party and file an affidavit of service.

Unless the Court orders otherwise, withdrawal of counsel shall not result in the extension of any of the deadlines contained in any case management orders, including the Uniform Pretrial Scheduling Order, see L.R. 16.1(e), or the adjournment of a trial ready or trial date.

### **83.3 Pro Bono Panel.**

**(a) Description of Panel.** In recognition of the need for representation of indigent parties in civil actions, this Court has established the Pro Bono Panel ("Panel") of the Northern District of New York.

1. The Panel shall include those members of the Criminal Assigned Counsel Panel in this Court. Any other attorney admitted to practice in this Court shall also be expected to participate in periodic training as offered by the Court and to accept no more than one pro bono assignment per year.

2. The Court shall maintain a list of Panel members, which shall include the information deemed necessary for the effective administration and assignment of Panel attorneys.

3. The Court shall select Panel members for assignment upon its determination that the appointment of an attorney is warranted. The Court shall select from the Panel a member who has not received an appointment from the Court during the past year and (i) has attended a training seminar sponsored by this Court, (ii) has adequate prior experience closely related to the matter assigned, or (iii) has accepted criminal (CJA) assignments from the Court.

4. Where a pro se party has one or more other cases pending before this Court in which an attorney has been appointed, the Court may determine it to be appropriate that the attorney appointed in the other case or cases be appointed to represent the *pro se* party in the case before the Court.

5. Where the Court finds that the nature of the case requires specific expertise, and among the Panel members available for appointment there are some with the required expertise, the attorney may be selected from among those included in the group or the Court may designate a specific member of the Panel.

6. Where the Court finds that the nature of the case requires specific expertise and none of the Panel members available for appointment has indicated that expertise, the Court may appoint an attorney with the required expertise who is not on the Panel.

**(b) Application for Appointment of Attorney.**

1. Any application for the appointment of an attorney by a party appearing *pro se* shall include a form of affidavit stating the party's efforts to obtain an attorney by means other than appointment and indicating any prior pro bono appointments of an attorney to represent the party in cases brought in this Court, including both pending and terminated actions.
2. Failure of a party to make a written application for an appointed attorney shall not preclude appointment.
3. Where a pro se litigant, who was ineligible for an appointed attorney at the time of initial or subsequent requests, later becomes eligible by reason of changed circumstances, a subsequent application may be entertained, using the procedures specified above, within a reasonable time after the change in circumstances has occurred.

**(c) Factors Used in Determining Whether to Appoint Counsel.**

On receipt of an application for the appointment of an attorney, the Court shall determine whether an attorney is to be appointed to represent the *pro se* party. That determination shall be made within a reasonable time after the application is made. Factors to be taken into account in making the determination are as follows:

1. The potential merit of the claims as set forth in the pleading;
2. The nature and complexity of the action, both factual and legal, including the need for factual investigation;
3. The presence of conflicting testimony calling for an attorney's presentation of evidence and cross-examination;
4. The capability of the *pro se* party to present the case;
5. The inability of the *pro se* party to retain an attorney by other means;
6. The degree to which the interests of justice shall be served by appointment of an attorney, including the benefit the Court shall derive from the assistance of an appointed attorney;
7. Any other factors the Court deems appropriate.

**(d) Order of Appointment.** Whenever the Court concludes that the appointment of an attorney is warranted, the Court shall issue an order directing the appointment of an attorney to represent the *pro se* party. The order shall be transmitted promptly to the Clerk. If service of the summons and complaint has not yet been made, an order directing service by the United States Marshal or by other appropriate method of service shall accompany the appointment order.

**(e) Notification of Appointment.** After an attorney has been selected, the Clerk shall send the attorney a copy of the order of appointment. Copies of the pleadings filed to date, relevant correspondence, and all other relevant documents shall be forwarded to the Clerk's office nearest to the attorney and made available for immediate review and copying of the necessary papers without charge. In addition to notifying the attorney, the Clerk shall also notify all of the parties to the action of the appointment, together with the name, address and telephone number of the appointed attorney.

**(f) Duties and Responsibilities of Appointed Counsel.** On receiving notice of the appointment, the attorney shall promptly file an appearance in the action to which the appointment applies unless precluded from acting in the action or appeal, in which event the attorney shall promptly notify the Court and the putative client. Promptly following the filing of an appearance, the attorney shall communicate with the newly-represented party concerning the action. In addition to a full discussion of the merits of the dispute, the attorney shall explore with the party any possibilities of resolving the dispute in other forums, including but not limited to administrative forums. If after consultation with the attorney the party decides to prosecute or defend the action, the attorney shall proceed to represent the party in the action unless or until the attorney-client relationship is terminated as provided by these Rules. In the Court's discretion, stand-by counsel may be appointed to act in an advisory capacity. "Stand-by counsel" is not the party's representative; rather, the role of stand-by counsel is to provide assistance to the litigant and the Court where appropriate. The Court may in its discretion appoint counsel for other purposes.

**(g) Reimbursement for Expenses.** Pro Bono attorneys who are appointed pursuant to this Rule may seek reimbursement for expenses incident to representation of indigent clients by application to the Court. Reimbursement or advances shall be permitted to the extent possible in light of available resources and, absent extraordinary circumstances, shall not exceed **\$1,200.00**. Any expenses in excess of **\$300.00** should receive the Court's prior approval. If good cause is shown, the Court may approve additional expenses. Request for reimbursement should be submitted on the Pro Bono Fund Voucher and Request for Reimbursement Form and be accompanied by detailed documentation. Counsel are advised that vouchers submitted in excess of **\$1,200.00**, absent the Court's prior approval, may be reduced or denied. All reimbursements made by withdrawal from the District Fund shall require the approval of the Chief Judge or a judge designated by the Chief Judge to authorize withdrawals. **To the extent that appointed counsel seeks reimbursement for expenses that are recoverable as costs to a prevailing party under Fed R. Civ. P. 54, the appointed attorney must submit a verified bill of costs on the form provided by the Clerk for reimbursement of such expenses.**

**(h) Grounds for Relief from Appointment.**

After appointment, an attorney may apply to be relieved of an order of appointment only on one or more of the following grounds, or on such other grounds as the appointing judge finds adequate for good cause shown:

1. some conflict of interest precludes the attorney from accepting the responsibilities of representing the party in the action;
2. the attorney does not feel competent to represent the party in the particular type of action assigned;
3. some personal incompatibility exists between the attorney and the party or a substantial disagreement exists between the attorney and the party concerning litigation strategy; or
4. in the attorney's opinion the party is proceeding for purposes of harassment or malicious injury or the party's claims or defenses are not warranted under existing law and cannot be supported by a good faith argument for extension, modification or reversal of existing law.

**(i) Application for Relief from Appointment.**

Any application by an appointed attorney for relief from an order of appointment on any of the grounds set forth in this Rule shall be made to the Court promptly after the attorney becomes aware of the existence of such grounds or within such additional period as the Court may permit for good cause shown.

**(j) Order Granting Relief from Appointment.**

If an application for relief from an order of appointment is granted, the Court shall issue an order directing the appointment of another attorney to represent the party. Where the application for relief from appointment identifies an attorney affiliated with the moving attorney who is able to represent the party, the order shall direct appointment of the affiliated attorney with the consent of the affiliated attorney. Any other appointment shall be made in accordance with the procedures set forth in these Rules. Alternatively, the Court shall have the discretion not to issue a further order of appointment, in which case the party shall be permitted to prosecute or defend the action *pro se*.

**83.4 Discipline of Attorneys.**

**(a)** The Chief Judge shall have charge of all matters relating to discipline of members of the bar of this Court.

**(b)** Any member of the bar of this Court who is convicted of a felony in any State, Territory, other District, Commonwealth, or Possession shall be suspended from practice before this Court and, upon the judgment of conviction becoming final, shall cease to be a member of the bar of this Court.

1. On the presentation to the Court of a certified or exemplified copy of a judgment of conviction, the attorney shall be suspended from practicing before this Court and, on presentation of proof that judgment of conviction is final, the name of the attorney convicted shall, by order of the Court, be struck from the roll of members of the bar of this Court.

(c) Any member of the bar of the Northern District of New York who shall resign from the bar of any State, Territory, other District, Commonwealth or Possession while an investigation into allegations of misconduct is pending shall cease to be a member of the bar of this Court.

On the presentation to the Court of a certified or exemplified copy of an order accepting resignation, the name of the attorney resigning shall, by order of the Court, be struck from the roll of members of the bar of this Court.

(d) Any member of the bar of the Northern District of New York who shall be disciplined by a court in any State, Territory, other District, Commonwealth, or Possession shall be disciplined to the same extent by this Court unless an examination of the record resulting in the discipline discloses

1. that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
2. that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court should not accept as final the conclusion on that subject;
3. that the imposition of the same discipline by this Court would result in grave injustice; or
4. that the misconduct has been held by this Court to warrant substantially different discipline.

On the filing of a certified or exemplified copy of an order imposing discipline, the attorney shall, by order of the Court, be disciplined to the same extent by this court. It is provided, however, that within thirty (30) days of service on the attorney of the order of discipline imposed by the Northern District of New York, either the attorney or a bar association designated by the Chief Judge in the order imposing discipline shall apply to the Chief Judge for an order to show cause why the discipline imposed in the Northern District of New York should not be modified on the basis of one or more of the grounds set forth in this Rule. The term "bar association" as used in this Rule shall mean the following: The New York State Bar Association or any city or county bar association.

(e) Any member of the bar of this Court who is convicted of a misdemeanor in any State, Territory, other District, Commonwealth, or Possession, upon such conviction, may be disbarred, suspended, or censured.

Upon the filing of a certified or exemplified copy of a judgment of conviction, the Chief Judge may designate a bar association to prosecute a proceeding against the attorney. The bar association shall obtain an order requiring the attorney to show cause within thirty (30) days after service, personally or by mail, why the attorney should not be disciplined. The Chief Judge may, for good cause, temporarily suspend the attorney pending the determination of the proceeding. On the attorney's answer to the order to show cause, the Chief Judge may set the matter for prompt hearing before a court of one or more judges or shall appoint a master to hear and to report findings and a recommendation. After a hearing and report, or if no timely answer is made by the attorney or the answer raises no issue requiring a hearing, the Court shall take action as justice requires. In all proceedings, a certificate of conviction shall constitute conclusive proof of the attorney's guilt of the conduct for which the attorney was convicted.

**(f)** Any attorney who has been disbarred from the bar of a state in which the attorney was admitted to practice shall have their name stricken from the roll of attorneys of this Court or, if suspended from practice for a period at such bar, shall be suspended automatically for a like period from practice in this Court.

**(g)** In addition to any other sanctions imposed in any particular case under these Rules, any person admitted to practice in this Court may be disbarred or otherwise disciplined, for cause, after hearing, and as the court may direct. The Chief Judge may appoint a Magistrate Judge or attorney(s) to investigate, advise or assist as to grievances or complaints from any source and as to applications by attorneys for relief from discipline. Other than provided by subsection (b) of this Rule, no censure, suspension, disbarment, or other attorney discipline shall be applied without both notice and an opportunity to be heard and the approval of a majority of the judges of the Court in active service, except that any judge of this Court may for cause revoke an admission *pro hac vice* previously granted by that judge. Complaints or grievances, and any files based on them, shall be treated as confidential. Discipline shall be imposed only upon suitable order of the Court, which shall or shall not be made available to the public, or published or circulated, as the Court shall determine in its discretion.

**(h)** A visiting attorney permitted to argue or try a particular cause in accordance with L.R. 83.1 who is found guilty of misconduct shall be precluded from again appearing in this Court. On entry of an order of preclusion, the Clerk shall transmit to the court of the State, Territory, District, Commonwealth, or Possession where the attorney was admitted to practice a certified copy of the order and of the Court's opinion.

**(i)** Unless the Court orders otherwise, no action shall be taken pursuant to L.R. 83.4 (e) and (f) in any case in which disciplinary proceedings against the attorney have been instituted in the State.

**(j)** The Court shall enforce the N.Y.S. Lawyer's Code of Professional Responsibilities, as adopted from time to time by the Appellate Division of the State of New York and as interpreted and applied by the United States Court of Appeals for the Second Circuit.

**(k)** Nothing in this Rule shall limit the Court's power to punish contempts or to sanction counsel in accordance with the Federal Rules of Civil or Criminal Procedure or the Court's inherent authority to enforce its rules and orders.

### **83.5 Contempt.**

(a) A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Fed. R. Civ. P. 37(b)(2)(D), shall be commenced by the service of a notice of motion or order to show cause.

The affidavit on which the notice of motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for resulting damages, and evidence as to the amount of damages that is available to the moving party. A reasonable attorneys' fee, necessitated by the contempt proceeding, may be included as an item of damages. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers on which it is based shall be served on the contemnor's attorney; otherwise service shall be made personally in the manner provided for by the Federal Rules of Civil Procedure for the service of summons. If an order to show cause is sought, the order may, on necessity shown, embody a direction to the United States Marshal to arrest and hold the alleged contemnor in bail in an amount fixed by the order, conditioned upon appearance at the hearing and further conditioned upon the alleged contemnor's amenability to all orders of the Court for surrender.

(b) If the alleged contemnor puts in issue the alleged misconduct or the resulting damages, the alleged contemnor shall, on demand, be entitled to have oral evidence taken either before the Court or before a master appointed by the Court. When by law the alleged contemnor is entitled to a trial by jury, a written demand shall be made on or before the return day or adjourned day of the application; otherwise the alleged contemnor shall be deemed to have waived a trial by jury.

(c) If the alleged contemnor is found to be in contempt of the Court, an order shall be made and entered

1. Reciting or referring to the verdict or findings of fact on which the adjudication is based;
2. Setting forth the amount of the damages to which the complainant is entitled;
3. Fixing the fine, if any, imposed by the Court, which fine shall include the damages found and naming the person to whom the fine shall be payable;
4. Stating any other conditions, the performance of which shall operate to purge the contempt;
5. Directing, in the Court's discretion, the arrest and confinement of the contemnor by the United States Marshal until the performance of the condition fixed in the order and payment of the fine or until the contemnor is otherwise discharged pursuant to law. The order shall specify the place of confinement. No party shall be required to pay or to advance to the Marshal any expenses for the upkeep of the prisoner. On an order of contempt, no person shall be detained in prison by reason of the non-payment of the fine for a period exceeding six months. A certified copy of the order committing the contemnor shall be sufficient warrant to the Marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(d) If the alleged contemnor is found not guilty of the charges, the contemnor shall be discharged from the proceeding and, in the discretion of the Court, shall have judgment against the complainant for costs, disbursements and a reasonable attorneys' fee.

### **83.6 Transfer of Cases to Another District.**

In a case ordered transferred from this district, the Clerk, unless otherwise ordered, shall, upon the expiration of ten (10) days, mail to the court to which the case is transferred

1. Certified copies of the Court's opinion and order compelling the transfer and of the docket entries in the case; and

2. The originals of all papers on file in the case except for the opinion ordering the transfer of the action.



# **SECTION X.** **ALTERNATE DISPUTE RESOLUTION** **AND GENERAL PROVISIONS**

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## **83.7      Arbitration.**

### **83.7-1   Scope and Effectiveness of Rule.**

This Rule governs the consensual arbitration program for referral of civil actions to court-annexed arbitration. It may remain in effect until further order of the Court. Its purpose is to establish a less formal procedure for the just, efficient and economical resolution of disputes, while preserving the right to a full trial on demand.

### **83.7-2   Actions Subject to this Rule.**

The Clerk shall notify the parties in all civil cases, except as otherwise directed by these Rules, that they may consent to non-binding arbitration under this Rule. The notice shall be furnished to the parties at pretrial/scheduling conferences or shall be included with pretrial conference notices and instructions. Consent to arbitration under this Rule shall be discussed at the pretrial/scheduling conference. No party or attorney shall be prejudiced for refusing to participate in arbitration. The Court shall allow the referral of any civil action pending before it to the arbitration process if the parties consent. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing the form with the Clerk within ten (10) days after receipt of the form by the parties. Consent shall be freely and knowingly entered into.

### **83.7-3   Referral to Arbitration.**

#### **(a)      Time for Referral.**

The Clerk shall refer every action subject to this Rule to arbitration in accordance with the procedures under this Rule twenty (20) days after the filing of the last responsive pleading or within twenty (20) days of the filing of a stipulated consent order referring the action to arbitration, whichever event occurs last, except as otherwise provided. If any party notices a motion to dismiss under the provisions of Fed. R. Civ. P. 12(a) and/or (b), or a motion to join necessary parties pursuant to the Federal Rules of Civil Procedure prior to the expiration of the twenty (20) day period, the motion shall be heard by the assigned judge and further proceedings under this Rule shall be deferred pending decision on the motion. If the action is not dismissed on the motion, it shall be referred to arbitration twenty (20) days after the filing of the decision.

Motions for summary judgment pursuant to Fed. R. Civ. P. 56 shall be filed and served within twenty (20) days following the close of discovery. The filing of a Rule 56 motion shall defer further proceedings under this Rule pending decision on the motion.

**(b) Authority of Assigned Judge.**

Notwithstanding any provision of this Rule, every action subject to this Rule shall be assigned to a judge upon filing in the normal course, in accordance with the Court's Assignment Plan. The assigned judge shall have authority to conduct status and settlement conferences, hear motions and in all other respects supervise the action in accordance with these Rules notwithstanding its referral by consent to arbitration.

**(c) Relief from Referral.**

Any party shall request relief from the operation of this Rule by filing with the Court a motion for the relief within twenty (20) days after entry of the initial stipulated consent order which refers the case for arbitration. The assigned judge shall, *sua sponte*, exempt an action from the application of this Rule where the objectives of arbitration would not be realized because (1) the case involves complex or novel legal issues, (2) legal issues predominate over factual issues, or (3) for other good cause.

**83.7-4 Selection and Compensation of Arbitrator.**

**(a) Selection of Arbitrators.**

The Clerk shall maintain a roster of arbitrators qualified to hear and determine actions under this Rule. The Court shall select arbitrators from time to time from applications submitted by or on behalf of attorneys willing to serve. To be eligible for selection, an attorney (1) shall have been admitted to practice for not less than five (5) years; (2) shall be a member of the bar of this Court or a member of the New York bar and reside within the Northern District of New York; and (3) shall either (i) for not less than five (5) years have devoted 50% or more of the attorney's professional time to matters involving litigation, or (ii) have substantial experience serving as a "neutral" in dispute resolution proceedings, or (iii) have substantial experience negotiating consensual resolutions to complex problems. Each attorney shall, upon selection, take the oath or affirmation prescribed in 28 U.S.C. § 453 and shall complete any training that the Court requires.

**(b) Selection of the Panel.**

Whenever an action has been referred to arbitration through consent of the parties pursuant to this Rule, the parties shall nominate the arbitrator or arbitrators whom they select to serve as an arbitrator(s) in full compliance with L.R. 83-7-4 (a), or the Clerk shall promptly furnish to each party a list of arbitrators whose names shall have been drawn at random from the roster for the division in which the case is pending. If the parties have elected to proceed with a **single** arbitrator, the Clerk shall provide five (5) names for the selection process. If the parties have elected to proceed with a panel of **three** (3) arbitrators, the Clerk shall provide seven (7) names for the selection process.

1. Each side shall be entitled to strike two names from the list. The list shall be signed by all parties and returned to the Clerk within ten (10) days of receipt. Failure of the parties to timely notify the Clerk of strikes shall result in the Clerk's selection of the panel.

2. The Clerk shall promptly notify the person or persons whose names are not stricken. If the parties have elected to proceed with a single arbitrator, and the arbitrator selected is unable or unwilling to serve, the process of selection under this Rule shall begin anew. If the parties have elected to proceed with a panel of arbitrators and any person selected is unable or unwilling to serve, the Clerk shall select an additional name at random who shall constitute the third member of the panel. If the Clerk is still unable to form a panel of three arbitrators for any reason, the process of selection under this Rule shall begin anew. When a single arbitrator, or when three of the selected arbitrators have agreed to serve, the Clerk shall promptly send written notice of the membership of the panel to each arbitrator and the parties.

**(c) Disqualification.**

No person shall serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. § 455 (conflict of interest) exist or in good faith shall be believed to exist.

**(d) Withdrawal by Arbitrator.**

Any person whose name appears on the roster maintained in the Clerk's office may ask at any time to have their name removed or, if selected to serve on a panel, decline to serve but remain on the roster.

**(e) Compensation and Reimbursement.**

Arbitrators shall be paid \$250.00 per day or portion of each day of hearing in which they participate serving as a single arbitrator or \$100.00 for each day or portion of a day if serving as a member of a panel of three (3). Compensation for an arbitrator's services outside of the hearing shall be supported by an affidavit setting forth in detail the time required for pre- and post-hearing matters. When the arbitrators file their decision, each shall submit a voucher, on the form prescribed by the Clerk, for payment by the Administrative Office of the United States Courts of compensation and out-of-pocket expenses necessarily incurred in the performance of their duties under this Rule. No reimbursement shall be made for the cost of office or other space for the hearing.

**83.7-5 Arbitration hearings.**

**(a) Hearing date.**

After an answer is filed in a case in which the parties have consented to arbitration and the Court has approved the consent and on completion of the parties' selection of the panel, the arbitration clerk shall send a notice to the attorney setting forth the date, time and location for the arbitration hearing. The date of the arbitration hearing set forth in the notice shall be approximately five (5) months, but in no event later than 180 days, from the date the answer was filed, except that the arbitration proceeding shall not, in the absence of the parties' consent, commence until thirty (30) days after the disposition by the Court of any motion to dismiss the complaint, motion for judgment on the pleadings, or motion to join necessary parties if such a motion was filed and served within twenty

(20) days after the filing of the last responsive pleading. Motions for summary judgment pursuant to Fed. R. Civ. P. 56 shall be filed in accordance with 83.7-3(a). The Court may modify the 180-day and twenty (20) day periods specified in L.R. 83.7 for good cause shown. The notice shall also advise the attorneys that they may agree to an earlier date for the arbitration hearing provided the arbitration clerk is notified within thirty (30) days of the date of the notice.

The notice shall also advise the attorneys that they have 120 days to complete discovery unless the Court orders a shorter or longer period for discovery. If a third party has been brought into the action, this notice shall not be sent until the third party has filed an answer.

**(b)** Upon entry of the order designating the arbitrator(s), the arbitration clerk shall send to each arbitrator a copy of the order designating the arbitrator, a copy of the court docket sheet and a copy of the guidelines for arbitrators. On receipt of the notice scheduling the case to proceed to arbitration and appointing an arbitrator, the plaintiff's attorney shall promptly forward to the arbitrator copies of all pleadings, including any counterclaim or third party complaint and respective answer. Thereafter, and at least ten (10) days prior to the arbitration hearing, each attorney shall deliver to the arbitrator and to the adverse attorney pre-marked copies of all exhibits, including expert reports and all portions of depositions and interrogatories to which reference shall be made at the hearing (but not including documents intended solely for impeachment).

**(c) Default of a Party.**

The arbitration hearing shall proceed in the absence of any party who, after notice, fails to be present. If a party fails to participate in the arbitration process in a meaningful manner, the arbitrator(s) shall make that determination and shall support it with specific written findings filed with the Clerk. The Court shall then conduct a hearing, on notice to all attorneys and personal notice to any party adversely affected by the arbitrator's determination, and may impose any appropriate sanctions, including, but not limited to, the striking of any demand for a trial de novo filed by that party.

**(d) Conduct of Hearing.**

The arbitrator is authorized to administer oaths and affirmations and all testimony shall be given under oath or affirmation. Each party shall have the right to cross-examine witnesses, except as otherwise provided. In receiving evidence, the arbitrator shall be guided by the Federal Rules of Evidence. These rules, however, shall not preclude the arbitrator from receiving evidence which the arbitrator considers to be relevant and trustworthy and which is not privileged. A party desiring to offer a document, otherwise subject to hearsay objections, at the hearing shall serve a copy on the adverse party not less than ten (10) days in advance of the hearing, indicating intent to offer it as an exhibit. Unless the adverse party gives written notice in advance of the hearing of intent to cross-examine the author of the document, any hearsay objection to the document shall be deemed waived. Attendance of witnesses and production of documents shall be compelled in accordance with Fed. R. Civ. P. 45.

**(e) Transcript or Recording.**

A party may cause a transcript or recording to be made of the proceedings at its expense but shall, at the request of the opposing party, make a copy available to the party at no charge, unless the parties have otherwise agreed. Except as provided in L.R. 83.7-7(c), no transcript of the proceeding shall be admissible in evidence at any subsequent de novo trial of the action.

**(f) Place of Hearing.**

Hearings shall be held at any location within the Northern District of New York designated by the arbitrator. Hearings may be held in any courtroom or other room in any federal courthouse made available to the arbitrator by the Clerk's office. When no room is available, the hearing shall be held at any suitable location selected by the arbitrator. In selecting a hearing location, the arbitrator shall consider the convenience of the panel, the parties and the witnesses. The date for the hearing shall not be continued except for extreme and unanticipated emergencies.

**(g) Time of Hearing.**

Unless the parties agree otherwise, hearings shall be held during normal business hours.

**(h) Authority of Arbitrator.**

The arbitrator shall be authorized to make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing before the arbitrator. Any two members of a panel shall constitute a quorum; but, unless the parties stipulate otherwise, the concurrence of a majority of the entire panel shall be required for any action or decision by the panel.

**(i) Ex Parte Communication.**

There shall be no ex parte communication between an arbitrator and any attorney or party on any matter touching the action except for purposes of scheduling or continuing the hearing.

**83.7-6 Award and Judgment.**

**(a) Filing of Award.**

The arbitrator shall file the award with the Clerk promptly following the close of the hearing and in any event not more than ten (10) days following the close of the hearing. As soon as the award is filed, the Clerk shall serve copies on the parties.

**(b) Form of Award.**

The award shall state clearly and concisely the name or names of the prevailing party or parties, the party or parties against which it is rendered, and the precise amount of money and other relief, if any, awarded. It shall be in writing and, unless the parties stipulate otherwise, be signed by the arbitrator or by at least two members of a panel. No panel member shall participate in the award without having attended the hearing.

**(c) Entry of Judgment on Award.**

Unless a party has filed a demand for a trial de novo (or a notice of appeal which shall be treated as a demand for trial de novo) within thirty (30) days of the filing of the arbitration award, the Clerk shall enter judgment on the arbitration award in accordance with Fed. R. Civ. P. 58. A judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the Court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

**(d) Sealing of Arbitration Awards.**

The contents of any arbitration award made under this Rule shall not be made known to any judicial officer who might be assigned to preside at the trial of the case or to rule on potentially dispositive motions

1. Until the district court has entered final judgment in the action or the action has been otherwise terminated;
2. Except for purposes of preparing the report required by section 903(b) of the Judicial Improvements and Access to Justice Act; or
3. Except as necessary for the Court to determine whether to assess costs or attorneys' fees under 28 U.S.C. § 655.

**83.7-7 Trial De Novo.**

**(a) Time for Demand.**

If either party files and serves a written demand for a trial de novo within thirty (30) days of entry of judgment on the award, the Clerk shall immediately vacate the judgement and the action shall proceed in the normal manner before the assigned judge.

**(b) Restoration to Court Docket.**

On a demand for a trial de novo, the action shall be restored to the Court's docket, trial ready, and treated for all purposes as if it had not been referred to arbitration. In such a case, any right of trial by jury that a party otherwise would have had, as well as any place on the Court calendar which is no later than that which a party otherwise would have had, is preserved.

**(c) Limitation on Admission of Evidence.**

At the trial de novo, the Court shall not admit any evidence that an arbitration proceeding has occurred, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding unless

1. The evidence would otherwise be admissible in the Court under the Federal Rules of Evidence; or
2. The parties have stipulated otherwise.

**(d) Arbitrator's Costs.**

The party requesting a trial de novo shall deposit the cost of the arbitrator's services as a prerequisite to the trial. If the requesting party fails to obtain judgment in an amount which, exclusive of interest and costs, is more favorable to that party, such funds so paid shall be retained by the Clerk. However, if that party is successful in obtaining a more favorable result, the prepaid costs shall be reimbursed.

**(e) Opposing Party's Costs.**

If a party has rejected an award and the action proceeds to trial, that party shall pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the arbitrator's award on that claim. If the opposing party has also rejected that award, however, a party is entitled to costs only if the verdict is more favorable to that party than the arbitrator's award:

1. Actual costs include those costs and fees taxable in any civil action and attorneys' fees for each day of trial not to exceed **\$500.00**.
2. For good cause shown, the Court shall order relief from payment of any or all costs.
3. The provisions of L.R. 83.7-7 (d) and (e) shall not apply to claims to which the United States or one of its agencies is a party.

**83.7-8 Cases Pending Prior to the Implementation of Arbitration.**

Notwithstanding the provisions of the Rules set forth above, each district judge shall select cases from the docket currently in process and notify the attorneys involved of the availability of the consensual arbitration program. A case shall qualify for referral to arbitration if it complies with the provisions of this Rule.

**83.8 Number of Experts in Patent Cases.**

On the trial of a patent case, whether in open court or by deposition, or partly in each way, only one expert witness shall be allowed to each side, unless leave for additional experts has been obtained from the Court on motion made and cause shown.



### **83.9 Commission to Take Testimony.**

- (a) Except as otherwise provided by law, in all actions or proceedings where the taking of depositions of witnesses or of parties is authorized, the procedure for obtaining and using the depositions shall be as provided in the Federal Rules of Civil Procedure. The party seeking the deposition shall furnish the officer to whom the commission is issued with a copy of the Federal Rules of Civil Procedure pertaining to discovery.
- (b) Upon receipt of a deposition, the Clerk, unless otherwise ordered, shall open and file it promptly.

### **83.10 Student Practice.**

General Order #13 pertains to the rules regarding student practice in this district. A copy of General Order #13 may be obtained from the Clerk's office or on the Court's webpage at "www.nynd.uscourts.gov."

### **83.11-1 Mediation.**

- (a) **Purpose.** The purpose of this Rule is to provide a supplementary procedure to the court's existing alternative dispute resolution procedures. It provides for an earlier resolution of civil disputes resulting in savings of time and cost to litigants and the court without sacrificing the quality of justice rendered or the right of litigants to a full trial on all issues not resolved through mediation.
- (b) **Definitions.** Mediation is a process by which an impartial person, the mediator, facilitates communication between disputing parties to promote understanding, reconciliation and settlement. The mediator is an advocate for settlement and uses the mediation process to help the parties fully explore any potential area of agreement. The mediator does not serve as a judge or arbitrator and has no authority to render any decision on any disputed issue or to force a settlement. The parties themselves are responsible for negotiating any resolution(s) to their dispute.

### **83.11-2 Designation and Qualifications of Mediators.**

- (a) **Designation of Mediators.** The judges of this Court may authorize those persons who are eligible and qualified to serve as mediators under this Rule in such numbers as the court shall deem appropriate. The Court may withdraw such designation of any mediator at any time. Applications for designation as an ADR panel member are available at the Clerk's office.
- (b) **List of Mediators.** The Alternative Dispute Resolution clerk (ADR clerk) shall maintain a list of court-approved mediators that shall be made available to counsel and the public upon request.

**(c) Required Qualifications of Mediators.**

1. An individual may be designated as a mediator if he or she (1) has practiced law for at least five (5) years; and (2) is a member in good standing of the bar of this court or of the New York bar and resides within the Northern District of New York; or (3) is a professional mediator who would otherwise qualify as a special master or is determined by the Court to be competent to perform the duties of the mediator and has completed appropriate training in the process of mediation as the Court may from time to time determine and direct; (4) shall attend and complete a mediation training course sponsored by the Court. Upon Court approval as a mediator, every mediator shall take the oath prescribed by 28 U.S.C. § 453.

2. No person shall serve as a mediator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist, or may in good faith be believed to exist. Additionally, any mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144. Furthermore, the mediator has a continuing obligation to disclose any information that may cause a party or the court to believe, in good faith, that such mediator should be disqualified.

**(d) Removal from the Panel.** Membership in the ADR Panel is a privilege, not a right, which may be terminated at any time by the Board of Judges, as they, in their sole discretion may determine.

**(e) Service to the Bar and Court Provided by Mediators.**

The individuals serving as mediators in the Northern District of New York perform their mediation duties as a pro bono service for the Court, litigants and the bar.

**83.11-3 Actions Subject to Mediation.**

**(a)** The Court may refer any civil action (or any portion thereof) to mediation under this Rule

1. By order of referral; or
2. On the motion of any party; or
3. By consent of the parties.

**(b)** Any civil action or claim referred to mediation pursuant to this Rule may be withdrawn from mediation by application to the assigned judge at least ten (10) days prior to the scheduled mediation session.

**(c)** Notwithstanding the provisions of the Rules set forth above, each judge shall select cases from the docket currently pending and notify the attorneys involved of the availability of the mediation program.

#### **83.11-4 Procedures for Referral, Selecting the Mediator, and Scheduling the Mediation Session.**

(a) The possibility and appropriateness of mediation under this Rule shall be discussed at the initial status/scheduling conference of the case that is held in accordance with the provisions of General Order #25.

(b) In every case in which the Court determines that referral to mediation is appropriate pursuant to 83.11-3 of this Rule, the Court shall enter an order of reference, which shall define the period of time during which the mediation session shall be conducted. The Court intends that mediation under this Rule occur at the earliest practical time in an effort to encourage earlier, less costly resolutions of disputes. Referral to mediation under this Rule shall not delay or stay other proceedings, including but not limited to discovery, unless the Court so orders.

(c) Within ten (10) days of the order of reference, parties are to select a mediator of their choice from a list of mediators available from the Court and submit the selection to the ADR clerk in the Clerk's office. If no such selection is made in a timely manner or if the parties cannot agree upon the mediator, the ADR clerk shall make the selection for them. The ADR clerk shall work with the selected mediator and counsel of record to set a mutually agreeable date for the mediation within the time prescribed by the order of reference.

(d) Mediation sessions under this Rule may be held in any available court space or in any other suitable location agreeable to the mediator and the parties. Consideration shall be given to the convenience of the parties and to the cost and time of travel involved.

(e) There shall be no continuance of a mediation session beyond the time set in the referral order except by order of this Court upon a showing of good cause. If any rescheduling occurs within the prescribed time, the ADR clerk must be notified and the location of the rescheduled hearing must be selected.

(f) Any settlement prior to the scheduled mediation shall be promptly reported to the mediator and to the ADR clerk.

#### **83.11-5 The Mediation Session.**

(a) **Memorandum for Mediation.** At least two days prior to the mediation session, each party shall provide to the mediator and all other such parties a "memorandum for mediation." This memo shall:

1. State the name and role of each person expected to attend;
2. Identify each person with full settlement authority;
3. Include a concise summary of the parties' claims or defenses;
4. Discuss liability and damages; and
5. State the relief sought by such party.

The summary shall not exceed five pages and shall not be filed in the case or otherwise made part of the court file.

**(b) Attendance Required.** The attorney who is expected to try the case for each party shall appear and shall be accompanied by an individual with authority to settle the lawsuit. The latter shall be the parties (if natural persons) or representatives of parties, that are not natural persons. This latter party may not be counsel (except in-house counsel). Attorneys for the parties shall notify other interested parties such as insurers or indemnitors who shall attend and are subject to the provisions of this Rule. Only the assigned judge may excuse attendance of any attorney, party, or party's representative. Any such request must be made in writing to the presiding judge a minimum of forty-eight (48) hours in advance of the mediation session.

**(c) Good Faith Participation in the Process.** Parties and counsel shall participate in good faith, without any time constraints, and put forth their best efforts toward settlement. Typically, the mediator will meet initially with all parties to the dispute and their counsel in a joint session and thereafter separately with each party and their representative. This process permits the mediator and the parties to explore the needs and interests underlying their respective positions, generate and evaluate alternative settlement proposals or potential solutions, and consider interests that may be outside the scope of the stated controversy including matters that may not be addressed by the Court. The parties will participate in crafting a resolution of the dispute.

**(d) Confidentiality.** Mediation is regarded as a settlement procedure and is confidential and private. No participant may disclose, without consent of the other parties, any confidential information acquired during mediation. There shall be no stenographic or electronic record, e.g., audio or video, of the mediation process.

1. All written and oral communications made in connection with or during the mediation session are confidential.
2. No communication made in connection with or during any mediation session may be disclosed or used for any purpose in any pending or future proceeding in the U.S. District Court for the Northern District of New York.
3. Privileged and confidential status is afforded all communications made in connection with the mediation session, including matters emanating from parties and counsel as well as mediators' comments, assessments, and recommendations concerning case development, discovery, and motions. Except for communication between the assigned judge and the mediator regarding noncompliance with program procedures (*as set forth in this Rule*), there will be no communications between the Court and the mediator regarding a case that has been designated for mediation. The parties will be asked to sign an agreement of confidentiality at the beginning of the mediation session.
4. Parties, counsel and mediators may respond to inquiries from authorized court staff which are made for the purpose of program evaluation. Such responses will be kept in strict confidence.
5. The mediator may not be required to testify in any proceeding relating to or arising out of the matter in dispute. Nor may the mediator be subject to process requiring disclosure of information or data relating to or arising out of the matter in dispute.

6. **Immunity.** A mediator, as well as the Mediation Administrator, shall be immune from claims arising out of acts or omissions incident to service as a court appointee in this mediation. *See e.g. Wagshal v. Foster*, 28 F. 3d 1249 (D.C. Cir. 1994).
7. **Default.** Subject to mediator's approval, the mediation session may proceed in the absence of a party, who, after due notice, fails to be present. The Court may impose sanctions on any party who, absent good cause shown, fails to attend or participate in the mediation session in good faith in accordance with this Rule.
8. **Conclusion of the Mediation Session.** The mediation shall be concluded:
  - a. By resolution and settlement of the dispute by the parties;
  - b. By adjournment for future mediation by agreement of the parties and the mediator;  
or
  - c. Upon declaration of impasse by the mediator that future efforts to resolve the dispute are no longer worthwhile.

Unless the Court authorizes otherwise, mediation sessions shall be concluded at least ten (10) days prior to any final pretrial conference scheduled by the Court.

If the mediation is adjourned by agreement for further mediation, the additional session shall be concluded within the time the Court orders.

#### **83.11-6 Mediation Report; Notice of Settlement or Trial.**

- (a) Immediately upon conclusion of the mediation, the mediator shall file a mediation report with the ADR clerk, indicating only whether the case settled, settled in part, or did not settle.
- (b) In the event the parties reach an agreement to settle the case, the representatives for each party shall promptly notify the ADR clerk and promptly prepare and file the appropriate stipulation of dismissal.
- (c) If the parties reach a partial agreement to narrow, withdraw or settle some but not all claims, they shall file a stipulation concisely setting forth the resolved claims with the ADR clerk within five (5) days of the mediation. The parties shall be bound by the stipulation.
- (d) If the mediation session does not conclude in settlement of all the issues in the case, the case will proceed toward trial pursuant to the scheduling orders entered in the case.

### **83.12-1 Early Neutral Evaluation.**

**The ENE Process.** Early neutral evaluation (ENE) is a process in which parties obtain from an experienced neutral (an "evaluator") a nonbinding, reasoned, oral evaluation of the merits of the case. The first step in the ENE process involves the Court appointing an evaluator who has expertise in the area of law in the case. After essential information and position statements are exchanged early in the pretrial period (usually within 150 to 200 days after a complaint has been filed), the evaluator convenes an ENE session that typically lasts about two hours. At the ENE meeting, each side briefly presents the factual and legal basis of its position. The evaluator may ask questions of the parties and help them identify the main issues in dispute and also areas of agreement. He or she may also help the parties explore options for settlement. If settlement does not occur, the evaluator then offers his or her opinion as to the settlement value of the case, including the likelihood of liability and the likely range of damages. With the benefit of this assessment, the parties are again encouraged to discuss settlement, with or without the evaluator's assistance. They may also explore ways of narrowing the issues in dispute, exchanging information about the case or otherwise preparing efficiently for trial.

The evaluator has no power to impose a settlement or to dictate any agreement regarding the pretrial management of the case. The ENE process, whether or not it results in settlement, is confidential.

### **83.12-2 Designation and Qualifications of Evaluators.**

**(a) Designation of Evaluators.** The judges of this Court may authorize those persons who are eligible and qualified to serve as evaluators under this rule in such numbers as the Court shall deem appropriate. The Court may withdraw such designation of any evaluator at any time. Applications for designation as an ADR panel member are available at the Clerk's office.

**(b) List of Evaluators.** The ADR clerk shall maintain a list of court-approved evaluators that shall be made available to counsel and the public upon request.

#### **(c) Required Qualifications of Evaluators.**

1. An individual may be designated as an Early Neutral Evaluator if he or she (1) has practiced law for at least fifteen years; and (2) is a member in good standing of the bar of this court or of the New York bar and resides within the Northern District of New York; or (3) is a professional who is determined by the Court to be competent to perform the duties of the evaluator and has completed appropriate training in the process of Early Neutral Evaluation as the Court may from time to time determine and direct. Upon Court approval as an evaluator, every evaluator shall take the oath prescribed by 28 U.S.C. § 453.
2. No person shall serve as an evaluator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist or may in good faith be believed to exist. Additionally any evaluator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144. Furthermore, the evaluator has a continuing obligation to disclose any information which may cause a party or the Court to believe in good faith that such evaluator should be disqualified.

- (d) **Removal from the Panel.** Membership in the ADR Panel is a privilege, not a right, which may be terminated at any time by the Board of Judges, as they, in their sole discretion may determine.
- (e) **Service to the Bar and Court Provided by Evaluators.** The individuals serving as evaluators in the Northern District of New York perform their duties as a pro bono service to the Court, litigants, and the bar.

### **83.12-3 Actions Subject to Early Neutral Evaluation.**

- (a) The Court may refer any civil action (or any portion thereof) to Early Neutral Evaluation under this Rule
  - 1. By order of referral;
  - 2. On the motion of any party; or
  - 3. By consent of the parties.
- (b) Any civil action or claim referred to the Early Neutral Evaluation Process pursuant to this Rule may be withdrawn from the program by application to the assigned judge at least ten (10) days before the scheduled evaluation session.
- (c) Notwithstanding the provisions of the rules set forth above, each judge shall select cases from the docket currently pending and notify the attorneys involved of the availability of the Early Neutral Evaluation Process.
- (d) When a case is designated for ENE, the ADR clerk will provide counsel with copies of the judge's designation order, a listing by division of the available early neutral evaluators, and a copy of the ENE procedure guide.

### **83.12-4 Administrative Procedures and Requirements.**

- (a) In most cases, the ENE order will be issued early enough in the pretrial period to allow the ENE session to be held between 150 and 200 days from the filing of the complaint.
- (b) When the ADR clerk receives a copy of a judicial order designating a case for ENE, the parties will be given a date by which they must choose an evaluator from the list provided to counsel. If selection of an evaluator is not made by the designated date, the ADR clerk will assign an evaluator with expertise in the subject matter of the lawsuit and notify counsel.
- (c) The evaluator will contact all attorneys and set the date and place of the evaluation session. Whenever possible, the ENE session shall be held within 150 to 200 days of the filing of the complaint and within forty-five days of the date the ADR clerk notifies counsel of the identity of the evaluator.
- (d) The ADR clerk and evaluators shall schedule ENE proceedings in a manner that does not interfere in any way with the management of case processing or actions of the referring judge. No party may avoid or postpone any obligation imposed by the order of reference on any ground related to the ENE process.

### **83.12-5 Evaluation Statements.**

- (a) No later than ten (10) calendar days prior to the ENE session, each party shall submit directly to the evaluator, and shall serve on all other parties, a written evaluation statement not to exceed ten (10) pages *excluding exhibits and attachments*.

Such statements must

1. Identify person(s), in addition to counsel, who will attend the ENE session and who have decision-making authority;
  2. Address whether the case involves legal or factual issues the early resolution of which might reduce the scope of the dispute or contribute significantly to settlement negotiations; and
  3. Identify the discovery that will contribute most to meaningful settlement negotiations.
- (b) Parties may also identify persons whose presence at the ENE session might improve significantly the productivity of the session.
- (c) Parties shall attach to the evaluation statements, copies of key documents out of which the suit arose (*e.g., contracts*) or materials that might advance the purposes of the ENE session (*e.g., medical reports*).

**Written evaluation statements are NOT to be filed with the Court. Evaluation statements are considered confidential between the parties and the evaluator.**

### **83.12-6 Attendance at ENE Sessions.**

- (a) The Court requires parties to attend evaluation sessions. The main purposes of an ENE session are to give litigants the opportunity (1) to present their positions; (2) to hear their opponents' view of the issues in dispute; and (3) to hear a neutral assessment of the strengths of each side's case.
- (b) When a party to a case is not a natural person (*e.g. a corporation*), a person *other than the outside counsel* who has authority to enter stipulations and to bind the party in a settlement must attend.
- (c) In cases involving insurance carriers, company representatives with settlement authority shall attend.
- (d) When a party is a unit of the federal government, an agency representative and counsel from the U.S. Attorney's Office, must attend the ENE session.
- (e) An attorney for each party who has primary responsibility for handling the trial of the matter must attend the ENE session.



- (f) A party or attorney may be excused from attending an ENE session only after petitioning the referring judge in writing no fewer than ten (10) calendar days before the scheduled ENE session. Such a petition must show that attendance at the ENE session would impose an extraordinary or unjustifiable hardship.
- (g) **Default.** Subject to the approval of the evaluator, the evaluation session may proceed in the absence of a party, who, after due notice, fails to be present. The Court may impose sanctions on any party who, absent good cause shown, fails to attend or participate in the evaluation session in good faith in accordance with this Rule.

### **83.12-7 Procedures at ENE Sessions.**

- (a) The evaluator has broad discretion to structure the ENE session. She or he will decide the time and place of the session and will structure the session and any follow-up sessions. Rules of evidence shall not apply and there is no formal examination or cross-examination of witnesses.
- (b) The evaluator shall:
  - 1. Permit each party, or counsel, to make an oral presentation of its position;
  - 2. Help parties identify areas of agreement and enter stipulations, wherever feasible;
  - 3. Assess the relative strengths and weaknesses of the parties' positions and explain the reasons for the assessments;
  - 4. Help parties explore settlement;
  - 5. Estimate, where possible, the likelihood of liability and the range of damages;
  - 6. Help parties develop an information-sharing or discovery plan to expedite settlement discussions or to position the case for disposition by other means; and
  - 7. Determine what, if any, follow-up measures will contribute to case development or settlement (*e.g. written reports; telephone reports; additional ENE sessions; or other forms of ADR, such as arbitration; mediation; settlement conference; or consent before a Magistrate Judge*).
- (c) When an evaluator completes work on a case, she or he will, regardless of case outcome, submit an evaluator assessment form to the ADR clerk.

### **83.12-8 Confidentiality.**

Early Neutral Evaluation is regarded as a settlement procedure and is confidential and private. No participant may disclose, without consent of the other parties, any confidential information acquired during the ENE session. There shall be no stenographic or electronic record, e.g., audio or video, of the ENE process.

- (a) All written and oral communications made in connection with or during any ENE sessions are confidential.
- (b) No communication made in connection with or during any ENE sessions may be disclosed or used for any purpose in any pending or future proceeding in this Court.
- (c) Privileged and confidential status is afforded all communications made in connection with ENE sessions, including matters emanating from parties and counsel as well as evaluators' comments, assessments, and recommendations concerning case development, discovery and motions. Except for communication between the assigned judge and the evaluator regarding noncompliance with program procedures *as set forth in this Rule*, there will be no communications between the Court and the evaluator regarding a case that has been designated for evaluation. The parties will be asked to sign an agreement of confidentiality at the beginning of the evaluation session.
- (d) Parties, counsel, and evaluators may respond to inquiries from authorized court staff which are made for the purposes of program evaluation. Such responses will be kept in strict confidence.
- (e) The evaluator may not be required to testify in any proceeding relating to or arising out of the matter in dispute. Nor may the evaluator be subject to process requiring disclosure of information or data relating to or arising out of the matter in dispute.

### **83.12-9 Role of Evaluators.**

- (a) Evaluators may not compel parties or counsel to conduct or respond to discovery or to file motions.
- (b) Evaluators may not determine the issues in a case or impose limits on pretrial activities.
- (c) Evaluators, and any parties who encounter a problem during the ENE session and have discussed such problem with the evaluator without obtaining a satisfactory resolution of the matter, shall report to the assigned judge any instances of noncompliance with ENE procedures that, in their view, may disrupt the evaluation process or threaten the integrity of the ENE program.
- (d) **Immunity.** An evaluator, as well as the Clerk, shall be immune from claims arising out of acts or omissions incident to service as a court appointee in this Early Neutral Evaluation Program.

### **83.12-10 Early Neutral Evaluation Report.**

- (a) Immediately upon conclusion of the evaluation session, the evaluator shall file a report with the ADR clerk indicating only whether the case settled, settled in part, or did not settle.
- (b) In the event the parties reach an agreement to settle the case, the representatives for each party shall promptly notify the ADR clerk and promptly prepare and file the appropriate stipulation of dismissal.
- (c) If the parties reach a partial agreement to narrow, withdraw, or settle some but not all claims, they shall file a stipulation concisely setting forth the resolved claims with the ADR clerk within five (5) days of the evaluation session. The parties shall be bound by the stipulation.
- (d) If the Early Neutral Evaluation Session does not conclude in settlement of all the issues in the case, the case will proceed toward trial pursuant to the scheduling orders entered in the case.

### **83.13 Sealed Matters**

Cases may be sealed in their entirety, or only as to certain parties or documents, when they are initiated, or at various stages of the proceedings. The Court may on its own motion enter an order directing that a document, party or entire case be sealed. A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reason(s) why the document, party or entire case should be sealed, together with a proposed order for approval by the assigned judge. The proposed order shall include language in the “ORDERED” paragraph stating the referenced document(s) to be sealed and should include the phrase “including this sealing order.” Upon the assigned judge’s approval of the sealing order, the Clerk shall seal the document(s) and the sealing order. A complaint presented for filing with a motion to seal and a proposed order shall be treated as a sealed case, pending approval of the order. Once a document or case is sealed by court order, it shall remain under seal until a subsequent order, upon the Court’s own motion or in response to the motion of a party, is entered directing that the document or case be unsealed.

### **84.1 Forms.**

[Reserved.]

### **85.1 Title.**

[Reserved.]

### **86.1 Effective Date.**

See L.R. 1.1(b).

## SECTION XI. CRIMINAL PROCEDURE

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### **1.1 Scope of the Rules.**

These are the Local Rules of Practice for Criminal Cases in the United States District Court for the Northern District of New York. They shall be cited as "**L. R. Cr. P. \_\_\_\_**."

### **1.2 Electronic Case Filing.** (Amended January 1, 2004)

All criminal cases filed in this Court may be assigned to the Electronic Case Files System in accordance with the *Procedural Order on Electronic Case Filing*, the provisions of which are incorporated herein by reference, and which the Court may amend from time to time.

## **2.1 THROUGH 4.1**

[Reserved]

### **5.1 Notice of Arrest.**

#### **(a) Notice of Arrest of Parole, Special Parole, Mandatory Release or Military Parole Violators.**

As soon as practicable after taking into custody any person charged with a violation of parole, special parole, mandatory release, or military parole, the United States Marshal shall give written notice to the chief probation officer of the date of the arrest and the place of confinement of the alleged violator.

#### **(b) Notice of Arrest of Probation or Supervised Release Violators.**

As soon as practicable after taking into custody any person charged with a violation of probation or supervised release, the United States Marshal shall give written notice to the chief probation officer, the United States Attorney, and the United States Magistrate Judge assigned to the case.

#### **(c) Notice of Arrest by Federal Agencies and Others.**

It shall be the duty of the United States Marshal to require all federal agencies and others who arrest or hold any person as a federal prisoner in this district, and all jailers who incarcerate any such person in any jail or place of confinement in this district, to give the United States Marshal notice of the arrest or incarceration promptly.

As soon as practicable after receiving notice or other knowledge of any such arrest or incarceration anywhere within the district, the Marshal shall give written notice to the United States Magistrate Judge at the office closest to the place of confinement and to the United States Attorney and the pretrial services officer of the date of arrest and the prisoner's place of confinement.

### **5.1.1 THROUGH 10.1**

[Reserved]

### **11.1 Pleas**

**(a)** In all cases where a presentence report is required, the Court will defer its decision to accept or reject any nonbinding recommendation pursuant to Rule 11(e)(1)(B), and the Court's decision to accept or reject any plea agreement pursuant to Rules 11(e)(1)(A) and (e)(1)(C) until there has been an opportunity to consider the presentence report unless the Court states otherwise.

(b) An attorney for a defendant indicating a desire to change a previously entered "not guilty" plea shall give notice to the United States Attorney and the assigned judge as soon as practicable and, if possible, at least twenty-four (24) hours prior to the commencement of the trial.

(c) For any plea agreement that is to be sealed, the United States Attorney shall provide the Court with a proposed sealing order.

### **12.1 Motions and Other Papers.**

(Amended January 1, 2004)

(a) All motion papers must be filed with the Court and served upon the other parties no less than **THIRTY-ONE CALENDAR DAYS** prior to the return date of the motion. The Notice of Motion should state the return date which was selected by the moving party. The moving party must specifically articulate the relief requested and must set forth a factual basis which, if proven true, would entitle the moving party to the requested relief. Opposing papers must be filed with the Court and served upon the other parties not less than **SEVENTEEN CALENDAR DAYS** prior to the return date of the motion. Reply papers may be filed only with leave of the Court, upon a showing of necessity. If leave is granted, reply papers must be filed with the Court and served upon the other parties not less than **ELEVEN CALENDAR DAYS** prior to the return date of the motion.

The parties shall not file, or otherwise provide to the assigned judge, a courtesy copy of the motion papers unless the assigned judge specifically requests that they do so.

In addition, no party shall file or serve a memorandum of law which exceeds twenty-five (25) pages in length, unless leave of Court is obtained prior to filing. All memoranda of law exceeding five (5) pages shall contain a table of contents and, wherever possible, parallel citations. A separate memorandum of law is unnecessary when the case law may be concisely cited (i.e. several paragraphs) in the body of the motion.

(b) No motion to compel discovery shall be heard unless the attorney for the moving party files with the Court, simultaneously with the filing of the moving papers, a notice stating that the moving party has conferred and discussed in detail with the opposing party the issues between them in a good faith effort to eliminate or reduce the area of controversy and to arrive at a mutually satisfactory resolution.

(c) All motions and other papers filed in a criminal action or proceeding shall show on the first page beneath the file number which, if any, of the speedy trial exclusions under 18 U.S.C. § 3161 are applicable to the action sought or opposed by the motion or other paper and the amount of resulting excludable time.

(d) Adjournment of motions shall be in the Court's discretion. Any party seeking an adjournment from the Court shall first contact the opposing attorney. Any application for an adjournment of a motion shall be made in writing and shall set forth the reason for the adjournment.

(e) If the parties agree a suppression hearing is necessary and the papers conform to the requirements of L.R. Cr. P. 12.1(a), the Court will set the matter for a hearing. If the government contests whether a hearing should be conducted, the defendant's motion must be accompanied by an affidavit, based upon personal knowledge, setting forth facts which, if proven true, would entitle the defendant to relief.

(f) An affidavit of counsel is not required when filing motions in criminal cases. A certificate of service is required at the conclusion of the motion.

(g) All papers filed in criminal cases shall comply with the guidelines established in Local Rule 8.1 regarding personal privacy protection.

### **13.1 Sealed Matters.**

Cases may be sealed in their entirety, or only as to certain parties or documents, when they are initiated, or at various stages of the proceedings. The Court may on its own motion enter an order directing that a document, party or entire case be sealed. A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reason(s) why the document, party or entire case should be sealed, together with a proposed order for approval by the assigned judge. The proposed order shall include language in the "ORDERED" paragraph stating the referenced document(s) to be sealed and should include the phrase "including this sealing order." Upon the assigned judge's approval of the sealing order, the Clerk shall seal the document(s) and the sealing order. A complaint presented for filing with a motion to seal and a proposed order shall be treated as a sealed case, pending approval of the order. Once a document or case is sealed by court order, it shall remain under seal until a subsequent order, upon the Court's own motion or in response to the motion of a party, is entered directing that the document or case be unsealed.

### **14.1 Discovery**

(a) It is the Court's policy to rely on the discovery procedure as set forth in this Rule as the sole means of the exchange of discovery in criminal actions except in extraordinary circumstances. This Rule is intended to promote the efficient exchange of discovery without altering the rights and obligations of the parties, while at the same time eliminating the practice of routinely filing perfunctory and duplicative discovery motions.

(b) Fourteen (14) days after arraignment, or on a date otherwise set by the Court for good cause shown, the government shall make available for inspection and copying to the defendant the following:

1. **Fed. R. Crim. P. 16(a) & Fed. R. Crim. P. 12(d) information.** All discoverable information within the scope of Fed. R. Crim. P 16(a), together with a notice pursuant to Fed. R. Crim. P. 12(d) of the government's intent to use this evidence, in order to afford the defendant an opportunity to file motions to suppress evidence.

2. **Brady Material.** All information and material known to the government which may be favorable to the defendant on the issues of guilt or punishment, within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963).

3. **Federal Rule of Evidence 404(b).** The government shall advise the defendant of its intention to introduce evidence in its case in chief at trial, pursuant to Rule 404(b) of the Federal Rules of Evidence. This requirement shall replace the defendant's duty to demand such notice.

(c) Unless a defendant, in writing, affirmatively refuses discoverable materials under Fed. R. Crim. P. 16(a)(1)(C), (D), or (E), the defendant shall make available to the government all discoverable information within the scope of Fed. R. Crim. P. 16(b) within twenty-one (21) days of arraignment.

(d) No less than fourteen (14) days prior to the start of jury selection, or on a date the Court sets otherwise for good cause shown, the government shall tender to the defendant the following:

1. **Giglio Material.** The existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective witnesses, within the scope of *United States v. Giglio*, 405 U.S. 150 (1972).

2. **Testifying Informant's Convictions.** A record of prior convictions of any alleged informant who will testify for the government at trial.

(e) The government shall anticipate the need for, and arrange for the transcription of, the grand jury testimony of all witnesses who will testify in the government's case in chief, if subject to Fed. R. Crim. P. 26.2 and 18 U.S.C. §3500. The government, and where applicable, the defendant, are requested to make materials and statements subject to Fed. R. Crim. P. 26.2 and 18 U.S.C. §3500 available to the other party at a time earlier than required by rule or law, so as to avoid undue delay at trial or hearings.

(f) It shall be the duty of counsel for all parties to immediately reveal to opposing counsel all newly discovered information, evidence, or other material within the scope of this Rule, and there is a continuing duty upon each attorney to disclose expeditiously. The government shall advise all government agents and officers involved in the action to preserve all rough notes.

(g) No attorney shall file a discovery motion without first conferring with opposing counsel, and the Court will not consider a motion unless it is accompanied by a certification of such conference and a statement of the moving party's good faith efforts to resolve the subject matter of the motion by agreement with opposing counsel. No discovery motions shall be filed for information or material within the scope of this Rule unless it is a motion to compel, a motion for protective order or a motion for an order modifying discovery. See Fed. R. Crim. P. 16(d). Discovery requests made pursuant to Fed. R. Crim. P. 16 and this Rule require no action on the part of this Court and should not be filed with the Court unless the party making the request desires to preserve the discovery matter for appeal.



## **15.1 THROUGH 16.1**

[Reserved.]

### **17.1 Subpoenas.**

#### **(a) Production Before Trial.**

Except on order of a judge, no subpoena for production of documents or objects shall be sought or issued if the subpoena requests production before trial. See Fed. R. Crim. P. 17(c).

#### **(b) Depositions.**

Except on order of a judge, no subpoena for a deposition shall be sought or issued. See Fed. R. Crim. P. 15; 17(f).

#### **(c) Subpoenas Requested by Attorneys Appointed Under the Criminal Justice Act.**

1. The Clerk shall issue subpoenas, signed but otherwise in blank, to an attorney appointed under the Criminal Justice Act. No subpoena so issued shall be served outside the boundaries of this district. Attorneys shall file with the clerk of the court a list of those witnesses who have been subpoenaed. This filing shall constitute certification that the subpoena(s) is necessary to obtain relevant and material testimony and that the witness' attendance is reasonably necessary to the defense of the charge.
2. If a witness is to be subpoenaed outside the boundaries of this district, an ex parte application for issuance of a subpoena shall be made to the appropriate court.
3. The defense attorney shall request service of the subpoenas under this Rule by the United States Marshal. The defense attorney shall obtain an order from the Court directing the Marshal to serve subpoenas. The Marshal shall serve the subpoenas in the same manner as in other cases, except that the name and address of the person served shall not be disclosed without prior authorization of the defense attorney. No fee shall be allowed for private service of any subpoena issued under this Rule unless express advance authorization is obtained by written order of the court.
4. As authorized by Fed. R. Crim. P. 17(b), the Court orders that the costs for service of process and payment of witness fees for each witness subpoenaed under this Rule shall be paid in the same manner in which similar costs and fees are paid in the case of a witness subpoenaed on behalf of the government.

### **17.1.1 Pretrial Conference.**

At the request of any party or upon the Court's own motion, the assigned judge may hold one or more pretrial conferences in any criminal action or proceeding. The agenda at the pretrial conference shall consist of any of the following items, so far as applicable, and such other matters designated by the judge as may tend to promote the fair and expeditious trial of the action or proceeding:

- (a) Production of witness statements under the Jenks Act, Title 18 U.S.C. § 3500 or Fed. R. Crim. P. 26.2;
- (b) Production of grand jury testimony of witnesses intended to be called at trial;
- (c) Production of exculpatory or other evidence favorable to the defendant on the issue of guilt or punishment;
- (d) Stipulation of facts which may be deemed proved at the trial without further proof by either party, and limitation of witnesses;
- (e) Appointment by the Court of interpreters under Fed. R. Crim. P. 28;
- (f) Dismissal of certain counts and elimination from the case of certain issues; e.g., insanity, alibi, and statute of limitations;
- (g) Severance of trial as to any co-defendant or joinder of any related case;
- (h) Identification of informers, use of lineup or other identification evidence, use of evidence of prior convictions of defendant or any witness, etc.;
- (i) Pretrial exchange of lists of witnesses intended to be called in person or by deposition to testify at trial, except those who may be called only for impeachment or rebuttal;
- (j) Pretrial exchange of documents, exhibits, summaries, schedules, models, or diagrams intended to be offered or used at trial;
- (k) Pretrial resolution of objections to exhibits or testimony to be offered at trial;
- (l) Preparation of trial briefs on controversial points of law likely to arise at trial;
- (m) Scheduling of the trial and of witnesses;
- (n) Settlement of jury instructions, voir dire questions, and challenges to the jury; and
- (o) Any other matter which may tend to promote a fair and expeditious trial.

## **18.1 THROUGH 19.1**

[Reserved]

## **20.1 Transfer from a District for Plea and Sentence.**

Upon the transfer under Fed. R. Crim. P. 20 of an information or indictment charging a minor offense, the case shall be referred immediately to a Magistrate Judge who shall take the plea and impose sentence in accordance with the rules for the trial of minor offenses if, pursuant to 18 U.S.C. § 3401, the defendant consents in writing to this procedure.

## **21.1 THROUGH 29.1**

[Reserved]

## **30.1 Jury Instructions.**

Proposed jury instructions shall be submitted to the Court in accordance with the time frames set forth in the Criminal Pretrial Scheduling Order issued at the time of arraignment. All proposed jury instructions shall be accompanied by citations to relevant authorities.

## **31.1**

[Reserved]

## **32.1 Presentence Reports.**

### **(a) Order for Presentence Report.**

Sentences will be imposed without unnecessary delay following the completion of the presentence investigation and report. This Court adopts the use of a uniform presentence order. The uniform presentence order shall contain: (1) date by which the presentence report is to be made available; (2) the deadlines for filing objections, if any, to the presentence report; (3) the deadlines for filing presentence memoranda, recommendations and motions; and, (4) a date for sentencing.

### **(b) Presence of Counsel.**

On request, the defendant's counsel is entitled to notice and a reasonable opportunity to attend any interview of the defendant by a probation officer in the course of a presentence investigation. It shall be incumbent upon the defendant's counsel to advise the Probation Office within two (2) business days of the date that the presentence report is ordered that counsel wishes to be present at any interview with the defendant.

**(c) Disclosure Procedures.**

1. The Presentence Report is confidential and should not be disclosed to anyone other than the defendant, the attorney for the defendant, the United States Attorney and the Bureau of Prisons without the Court's consent.
2. The court directs the probation officer not to disclose the probation officer's confidential recommendation to any of the parties.
3. All counsel are admonished that the time limits set forth in the Uniform Presentence Order shall be adhered to in order to allow sufficient time for the Court to read and analyze the material which is submitted.
4. The Court, on motion of either party or of the probation office, may modify the time requirements set forth in the Uniform Presentence Order subject to the provisions of Title 18 U.S.C. § 3552(d).

**(d) Responsibilities of the Clerk and Probation Office.**

1. Within three (3) business days after sentencing, the Clerk shall serve a copy of the judgment upon the parties and the United States Marshal. The Clerk shall also provide the probation office with three (3) certified judgment orders along with the Court's statement of reasons and the Court's findings on unresolved objections and copies of other documents pertinent to the sentencing placed in the record during the sentencing hearing.
2. Copies of the Presentence Report provided to the Court of Appeals for the Second Circuit by the Clerk shall include the Court's finding on unresolved objections.

**33.1 THROUGH 43.1.**

[Reserved.]

**44.1 Right to and Assignment of Counsel.**

If a defendant, appearing without an attorney in a criminal proceeding, desires to obtain an attorney, a reasonable continuance for arraignment, not to exceed one week at any one time, shall be granted for that purpose. If the defendant requests that the Court appoint an attorney or fails for an unreasonable time to appear with an attorney, the assigned District Judge or Magistrate Judge shall, subject to the applicable financial eligibility requirements, appoint an attorney unless the defendant, electing to proceed without an attorney, waives the right to an attorney in a manner approved by the District Judge or the Magistrate Judge. In that case, the District Judge or Magistrate Judge shall, nevertheless, designate an attorney to advise and assist the defendant to the extent the defendant might thereafter desire. Appointment of an attorney shall be made in accordance with this Court's Plan adopted pursuant to the Criminal Justice Act of 1964 and on file with the Clerk.

#### **44.2 Appearance and Withdrawal of Counsel.**

(a) An attorney appearing for a defendant in a criminal case, whether retained or appointed, shall promptly file a written appearance with the Clerk. An attorney who has appeared shall thereafter withdraw only upon notice to the defendant and all parties to the case and an order of the Court finding that good cause exists and granting leave to withdraw. Failure of a defendant to pay agreed compensation shall not be deemed good cause unless the Court determines otherwise.

(b) Unless leave is granted, the attorney shall continue to represent the defendant until the case is dismissed, the defendant is acquitted or convicted, or the time for making post-trial motions and for filing a notice of appeal, as specified in Fed. R. App. P. 4(b), has expired. If an appeal is taken, the attorney shall continue to serve until the court having jurisdiction of the case grants leave to withdraw or until another attorney has been appointed by that court as provided in 18 U.S.C. § 3006A and other applicable provisions of law.

#### **45.1 Excludable Time under the Speedy Trial Act.**

No continuance or extension shall be granted under the Speedy Trial Act unless a motion or stipulation is submitted that recites the appropriate exclusionary provision of the Speedy Trial Act, 18 U.S.C. § 3161. In addition, the motion or stipulation shall be accompanied by an affidavit of facts upon which the Court can base a finding that the requested relief is warranted. The attorneys shall also submit a proposed order setting forth the time to be excluded and the basis for its exclusion. If the exclusion affects the trial date of the action, the stipulation or proposed order shall have a space for the Court to enter a new trial date in accordance with the excludable time period. The Court shall disallow all requests for a continuance or extension that do not comply with this Rule.

#### **46.1 Pretrial Services and Release on Bail.**

Pursuant to the Pretrial Services Act of 1982, 18 U.S.C. §§ 3152 -3155, the Court authorizes the United States Probation Office and/or Pretrial Services Office of the Northern District of New York to perform all services as provided by the Act.

- (a) Pretrial Service Officers shall conduct an interview and investigate each individual charged with an offense and shall submit a report to the Court as soon as practicable. The judicial officer setting conditions of release or reviewing conditions previously set shall receive and consider all reports submitted by Pretrial Service Officers, the government and defense counsel.
- (b) Pretrial service reports shall be made available to the attorney for the accused and the attorney for the government and shall be used only for the purpose of fixing conditions of release, including bail determinations. Otherwise, the reports shall remain confidential, as provided in 18 U.S.C. § 3153, subject to the exceptions provided therein.

- (c) Pretrial Service Officers shall supervise persons released on bail at the discretion of the judicial officer granting the release or modifications of the release.

**47.1 Motions.**

See L.R. Cr. P. 12.1.

**48.1 THROUGH 56.1.**

[Reserved]

**57.1 Criminal Designation Forms.**

The United States Attorney shall file a criminal designation form with each new indictment or information. On this sheet the United States Attorney shall indicate the name and address of the defendant and the magistrate judge case number, if any. The criminal designation form also shall contain any further information that the Court or the Clerk deems pertinent. A copy of the designation form can be obtained from the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

**57.2 Release of Bond.**

When a defendant has obtained release by depositing a sum of money or other collateral as bond as provided by 18 U.S.C. § 3142, the payee or depositor shall be entitled to a refund or release thereof when the conditions of the bond have been performed and the defendant has been discharged from all obligations thereon. The defendant's attorney shall prepare a motion and proposed order for the release of the bond and submit the motion to the Court for the assigned judge's signature. Unless otherwise specified by court order, or upon such proof as the Court shall require, all bond refunds shall be disbursed to the individual whose name appears on the Court's receipt for payment.

**58.1 Magistrate Judges.**

**(a) Powers and Duties.**

1. A full-time Magistrate Judge is authorized to exercise all powers and perform all duties permitted by 28 U.S.C. § 636(a), (b), and (c), and any additional duties that are consistent with the Constitution and laws of the United States. A part-time Magistrate Judge is authorized to exercise all of those duties, except those permitted under 28 U.S.C. § 636(c), and any additional duties consistent with the Constitution and laws of the United States.

2. A Magistrate Judge is also authorized to:

- (A) Conduct removal proceedings and issue warrants of removal in accordance with Fed. R. Crim. P. 40;
- (B) Conduct extradition proceedings in accordance with 18 U.S.C. § 3184;
- (C) Impanel and charge a Grand Jury and Special Grand Juries and receive grand jury returns in accordance with Fed. R. Crim. P. 6(f);
- (D) Conduct voir dire and select petit juries for the Court;
- (E) Conduct necessary proceedings leading to the potential revocation of probation;
- (F) Order the exoneration or forfeiture of bonds;
- (G) Exercise general supervision of the Court's criminal calendar, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the Court;
- (H) Exercise all the powers and duties conferred or imposed upon United States commissioners by law or the Federal Rules of Criminal Procedure;
- (I) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146, and take acknowledgments, affidavits, and depositions;
- (J) Determine motions pursuant to 18 U.S.C. § 4241(a) for a hearing to determine the mental competency of the defendant and, if necessary, order that a psychiatric or psychological examination of the defendant be conducted pursuant to 18 U.S.C. § 4241(b); and
- (K) Conduct hearings to determine the mental competency of the defendant pursuant to 18 U.S.C. § 4247(d) and issue a report and recommendation to the assigned District Judge pursuant to 28 U.S.C. § 636(b).

**(b) Felonies.**

On the return of an indictment or the filing of an information, a District Judge shall assign felony matters to a Magistrate Judge for the purpose of arraignment, for the determination and fixing the conditions of pretrial release, and for the assignment of an attorney to the extent authorized by law.

**(c) Misdemeanors.**

1. A Magistrate Judge is authorized to conduct trials of persons accused of misdemeanors committed within this district in accordance with 18 U.S.C. § 3401, order a presentence investigation report on any such persons who are convicted or plead guilty or nolo contendere, and sentence such persons.
2. Any person charged with a misdemeanor may, however, elect to be tried before a judge of the district court for the district in which the offense was committed. The Magistrate Judge shall carefully advise defendants of their right to trial, judgment, and sentencing by a judge of the district court and their right to a trial by jury before a District Judge or Magistrate Judge. The Magistrate Judge shall not proceed to try the case unless the defendant, after such explanation, files a written consent to be tried before the Magistrate Judge. That consent specifically must waive trial, judgment, and sentencing by a judge of the district court.
3. Procedures on appeal to a District Judge in a consent case pursuant to 18 U.S.C. § 3401 shall be as provided in Fed. R. Crim. P. 58(g). Unless otherwise ordered,
  - (A) The appellant's brief shall be filed within ten (10) days following the filing of the notice of appeal;
  - (B) The appellee's brief shall be filed within ten (10) days following submission of the appellant's brief;
  - (C) No oral argument shall be permitted.

**58.2 Forfeiture of Collateral in Lieu of Appearance.**

In accordance with Fed. R. Crim. P. 58(d)(1), the U.S. District Court for the Northern District of New York has adopted the schedule for violations as set forth in General Order #4. Copies of General Order #4 may be obtained from the Clerk's office or on the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

**59.1 THROUGH 60.1.**

[Reserved]



## SECTION XII.

### LOCAL RULES OF PROCEDURE FOR ADMIRALTY AND MARITIME CASES

Rule A	Scope of the Rules. . . . .	XII-1
Rule B	Maritime Attachment and Garnishment. . . . .	XII-2
Rule C	Actions in Rem - Special Provisions. . . . .	XII-2
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#### **Rule A Scope of Rules.**

- (a)1. **Authority.** The local admiralty rules of this Court are promulgated by a majority of the judges as authorized by and subject to the limitations of the Fed. R. Civ. P. 83.
- (a)2. **Scope.** The local admiralty rules apply only to civil actions that are governed by Supplemental Rule A of the Supplemental Rules for Certain Admiralty and Maritime Claims “Supplemental Rule or Rules”. All other local rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable local admiralty rules, the local admiralty rules shall govern.
- (a)3. **Citation.** The local admiralty rules may be cited by the letter “LAR” and the lowercase letters and numbers in the parentheses that appear at the beginning of each section. The lower case letter is intended to associate the local admiralty rule with the Supplemental Rule that bears the same capital letter.
- (a)4. **Definitions.** As used in the local admiralty rules, “court” refers to United States District Court for the Northern District of New York; “judge” refers to a United States District Judge or to a United States Magistrate Judge; “clerk” refers to the Clerk of the Court and includes deputy clerks of the Court; and “marshal” refers to the United States Marshal of this district and includes deputy marshals; “keeper” refers to any person or entity appointed by the Marshal to take physical custody of and maintain the vessel or other property under arrest or attachment; and “substitute custodian” refers to the individual or entity who, upon motion and order of the Court, assumes the duties of the marshal or keeper with respect to the vessel or other property arrested or attached.

## **Rule B Maritime Attachment and Garnishment.**

### **(b)1. Found within the District.**

A defendant is not found within the district unless the defendant can be personally served therein by delivering process (i) in the case of an individual, to the individual personally, or by leaving a copy thereof at the individual's dwelling, house or usual place of abode with some person of suitable age and discretion; (ii) in the case of a corporation, trust or association, to an officer, trustee, managing or general agent thereof; (iii) in the case of a partnership, to a general partner thereof; and (iv) in the case of a limited liability company, to a manager thereof.

### **(b)2. Affidavit that defendant is not found within the District.**

The affidavit required by Supplemental Rule B(1) to accompany the complaint shall specify with particularity the efforts made by and on behalf of the plaintiff to find and serve the defendant within the district.

### **(b)3. Notice to Defendant.**

In default applications, the affidavit or other proof required by Supplemental Rule B(2) from the plaintiff or the garnishee shall specify with particularity the effort made to give notice of the action to the defendant.

### **(b)4. Service by Marshal.**

If property to be attached is a vessel or tangible property aboard a vessel, the process shall be delivered to the Marshal for service.

## **Rule C Actions in Rem: Special Provisions.**

### **(c)1. Intangible Property.**

The summons to show cause why property should not be deposited in the Court issued pursuant to Supplemental Rule C(3) shall direct the person having control of intangible property to show cause no later than ten (10) calendar days after service why the intangible property should not be delivered to the Court to abide the judgment. The Court for good cause shown may lengthen or shorten the time. Service of the warrant has the effect of arresting the intangible property and bringing it within the Court's control. Service of the summons to show cause requires a garnishee wishing to retain possession of the property to establish grounds for doing so, including specification of the measures taken to segregate and safeguard the intangible property arrested. The person who is served may, upon order of the Court, deliver or pay over to the person on whose behalf the warrant was served or to the clerk the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. The person asserting any ownership interest in the property or a right of possession may show cause as provided in Supplemental Rule C(6) why the property should not be delivered to the Court.

**(c)2. Publication of Notice of Action and Arrest.**

The notice required by Supplemental Rule C(4) shall be published at least once in a newspaper named in LAR (g)2, and the plaintiff's attorney shall file a copy of the notice as it was published with the Clerk. The notice shall contain:

- (a) The court, title, and number of the action;
- (b) The date of the arrest;
- (c) The identity of the property arrested;
- (d) The name, address, and telephone number of the attorney or the plaintiff;
- (e) A statement that a person asserting any ownership interest in the property or a right of possession pursuant to Supplemental Rule C(6) must file a statement of such interest with the Clerk and serve it on the attorney for the plaintiff within ten (10) calendar days after publication.
- (f) A statement that an answer to the complaint must be filed and served within thirty (30) calendar days after publication and that, otherwise, default may be entered and condemnation ordered;
- (g) A statement that applications for intervention under Fed. R. Civ. P. 24 by persons asserting maritime liens or other interests shall be filed within the time fixed by the Court; and
- (h) The name, address, and telephone number of the Marshal, keeper, or substitute custodian.

**(c)3. Default In Action In Rem.**

**(a) Notice Required.**

A party seeking a default judgment in an action in rem must satisfy the Court that due notice of the action and arrest of property has been given:

- (1) by publication as required in LAR(c) (2), and
- (2) by service upon the Marshal and keeper, substitute custodian, master, or other person having custody of the property, and
- (3) by mailing such notice to every other person who has not appeared in the action and is known to have an interest in the property.

**(b) Persons with Recorded Interests.**

- (1) If the defendant property is a vessel documented under the law of the United States, the plaintiff must attempt to notify all persons named in the United States Coast Guard Certificate of ownership.
- (2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, the plaintiff must attempt to notify the persons named in the records of the issuing authority.
- (3) If the defendant property is of such character that there exists a governmental registry of recorded property interests and/or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

**(c)4. Entry of Default and Default Judgment.**

After the time for filing an answer has expired, the plaintiff may move for entry of default under Fed. R. Civ. P. 55(a). Default will be entered upon showing that:

- (a) Notice has been given as required by LAR (c) (3) (a); and
- (b) Notice has been attempted as required by LAR (c) (3) (b), where appropriate; and
- (c) The time to answer by claimants of ownership to or possession of the property has expired; and
- (d) No answer has been filed or no one has appeared to defend on behalf of the property. The plaintiff may move for judgment under Fed. R. Civ. P. Rule 55(b) at any time after default has been entered.

**Rule D. Possessory, Petitory, and Partition Actions.**

**(d)1. Return Date.**

In a possessory action under Supplemental Rule D, a judge may order that the statement of interest and answer be filed on a date earlier than twenty (20) calendar days after arrest. The order may also set a date for expedited hearing of the action.

**Rule E.            Actions In Rem and Quasi In Rem: General Provisions**

**(e)1.    Itemized Demand for Judgment.**

The demand for judgment in every complaint filed under Supplemental Rule B or C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Supplemental Rule E(5) (a) may be based upon these allegations.

**(e)2.    Salvage Action Complaints.**

In an action for a salvage award, the complaint shall allege the dollar value of the vessel, cargo, freight, and other property salvaged or other basis for an award and the dollar amount of the award sought.

**(e)3.    Verification of Pleadings.**

Every complaint in Supplemental Rule B, C, and D actions shall be verified upon oath or solemn affirmation or in the form provided by 28 U.S.C. § 1746 by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized representative thereof; and state that the affiant or declarant is authorized so to verify. If the verification was not made by a party or authorized representative, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized representative, which shall be procured by commission or as otherwise ordered.

**(e)4.    Review by Judicial Officer.**

Unless the Court requires otherwise, the review of complaints and papers called for by Supplemental Rule B(1) and C(3) does not require the affiant or declarant party or attorney to be present. The applicant for review shall include a form of order to the Clerk which, upon signature by the assigned judge, will direct the arrest, attachment or garnishment sought by the applicant. In exigent circumstances, the certification of the plaintiff or his attorney under Supplemental Rule B and C shall consist of an affidavit or a declaration pursuant to 28 U.S.C. § 1746 describing in detail the facts establishing the exigent circumstances.

**(e)5.    Instructions to the Marshal.**

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal.

**(e)6. Property in Possession of United States Officer.**

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee, if present, and otherwise to the custodian of the property. The Marshal will instruct the officer or employee or custodian to retain custody of the property the Court orders otherwise.

**(e)7. Security for Costs.**

In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the Clerk pursuant to Supplemental Rule E(2) (b). Unless otherwise ordered, the amount of security shall be \$500.00. The party so ordered shall post the security within five (5) days after the order is entered. A party who fails to post security when due may not participate further in the proceedings, except by order of the Court. A party may move for an order increasing the amount of security for costs.

**(e)8. Adversary Hearing.**

The Court shall conduct the adversary hearing following arrest or attachment or garnishment provided for in Supplemental Rule E(4)(f) within three business days, unless otherwise ordered. The person(s) requesting the hearing shall notify all persons known to have an interest in the property of the time and place of the hearing.

**(e)(9) Appraisal.**

The Clerk will enter an order for appraisal of property so that security may be given or altered at request of any interested party. If the parties do not agree in writing upon an appraiser, a judge will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall promptly file the appraisal with the Clerk and serve it upon counsel of record. The appraiser's fee shall be paid in the first instance by the moving party, but it is taxable as an administrative cost of the action.

**(e)(10) Security Deposit for Seizure of Vessels.**

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit \$1,000 with the Marshal to cover the Marshal's expenses including, but not limited to, dockage, keepers, maintenance and insurance. The Marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time as requested to cover the Marshal's estimated expenses until the property is released or disposed of as provided in Supplemental Rule E. Any party who fails to advance such additional costs as required by the Marshal may not participate further in the proceedings, except by order of the Court. The Marshal may, upon notice to all parties, petition the Court for an order to be issued forthwith releasing the vessel if additional sums are not advanced within three (3) business days of the initial request for additional sums.

**(e)(11) Intervenors' Claims.**

**(a) Presentation of Claims.**

When a vessel or property has been arrested, attached, or garnished, and is in the hands of the Marshal or custodian substituted therefor, anyone having a claim against the vessel or property is required to present it by filing an intervening complaint and obtaining a warrant of arrest, and not by filing an original complaint, unless the Court orders otherwise. No formal motion is required. The intervening party shall serve a copy of the intervening complaint and warrant of arrest upon all parties to the action and shall forthwith deliver a conformed copy of the complaint and warrant of arrest to the Marshal, who shall deliver the copies to the vessel or custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the Marshal for the intervenor's seizure of a vessel as required by LAR (e)(10).

**(b) Sharing Marshal's Fees and Expenses.**

An intervenor shall owe a debt to the preceding plaintiffs and intervenors, enforceable on motion, consisting of the intervenor's share of the Marshal's fees and expenses in the proportion that the intervenor's claim against the property bears to the sum of all the claims asserted against the property. If any plaintiff permits vacation of an arrest, attachment, or garnishment, the remaining plaintiffs shall share the responsibility to the Marshal for fees and expenses in proportion to the remaining claims asserted against the property and for the duration of the Marshal's custody because of each such claim.

**(e)(12) Custody of Property.**

**(a) Safekeeping of Property.**

When a vessel or other property is brought into the Marshal's custody by arrest or attachment, the Marshal shall arrange for the adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the Marshal may be appointed by order of the Court. An application seeking appointment of a substitute custodian shall be on notice to all parties and the Marshal and must show the name of the proposed substitute custodian, the location of the vessel during the period of such custody, and that adequate insurance coverage is in place.

**(b) Insurance.**

The Marshal may order insurance to protect the Marshal, his deputies, keepers, and substitute custodians from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing whatever services may be undertaken to protect the vessel, cargo, or other property and in maintaining the court's custody. The arresting or attaching party shall reimburse the Marshal for premiums paid for the insurance and, where possible, shall be named as an additional insured on the policy. A party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the Marshal therefor. The premiums charged for the liability insurance shall be paid in the first instance by the initial party obtaining the arrest and holding of the property but are taxable as administrative costs of the action while the vessel, cargo, or other property is in the custody of the court.

**(c)(1) Cargo Handling, Repairs, and Movement of the Vessel.**

Following arrest or attachment of a vessel, cargo handling shall be permitted to commence or continue unless the Court orders otherwise. No movement of or repairs to the vessel shall take place without order of the Court. The applicant for an order under this Rule shall give notice to the Marshal and to all parties of record.

**(c)(2) Insurance.**

Upon any application under (c)(1) above, the moving party shall obtain and provide proof of adequate insurance coverage of the moving party to indemnify the Marshal for any liability arising out of such activity, and any such activity shall be at the cost and expense of the moving party and shall not be taxable as an administrative cost of the action, unless the Court orders otherwise. Before or after the Marshal has taken custody of a vessel, cargo, or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the Marshal and to all parties of record. The Court will require that adequate insurances on the property be maintained by the successor to the Marshal, before issuing the order to change arrangements.

**(d) Claims by Suppliers for Payment of Charges.**

A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the Court, who has not been paid and claims the right to payment as an expense of administration, shall submit an invoice to the Clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed, and all parties of record. The Court may consider the claims individually or schedule a single hearing for all claims.



(e)(13)

**Sale of Property.**

**(a) Notice.**

Unless otherwise ordered upon good cause shown or as provided by law, notice of sale of property in an action in rem shall be published as provided in LAR (g)(2) at least three (3) times during the period of time consisting of thirty (30) days prior to the day of the sale.

**(b) Payment of Bid.**

These provisions apply unless otherwise ordered in the order of sale; the person whose bid is accepted shall immediately pay the Marshal the full purchase price if the bid is \$1,000 or less. If the bid exceeds \$1,000, the bidder shall immediately pay a deposit of at least \$1,000 or 10% of the bid, whichever is greater, and shall pay the balance within three business days after the day on which the bid was accepted. If an objection to the sale or any upset bid permitted by the order of sale is filed within that period, the bidder is excused from paying the balance of the purchase price until three business days after the sale is approved. Payment shall be made in cash, by certified check, or by cashier's check drawn on banks insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

**(c) Late Payment.**

If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall pay the Marshal the cost of keeping the property from the due date until the balance is paid, and the Marshal may refuse to release the property until this charge is paid.

**(d) Default.**

If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall be in default. In such a case, the Court may accept the second highest bid or arrange a new sale. The defaulting bidder's deposit shall be forfeited and applied to any additional costs incurred by the Marshal because of the default, the balance being retained in the registry of the Court awaiting further order of the Court.

**(e) Report of sale by Marshal.**

At the conclusion of the sale, the Marshal shall forthwith file a written report with the Court of the fact of sale, the date, the names and addresses, and bid amounts of the bidders, and any other pertinent information.

**(f) Time and Procedure for Objection to Sale.**

An interested person may object to the sale by filing a written objection with the Clerk within three (3) business days following the sale, serving the objection on all parties of record, the successful bidder, and the marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least seven calendar days. If additional custodial expenses are required, the objector must furnish same forthwith, failing which, the objection shall be immediately dismissed. Payment to the Marshal shall be in cash, certified check, or cashier's check drawn on banks insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

**(g) Confirmation of Sale.**

Unless an objection to the sale is filed, or any upset bid permitted by and conforming to the terms provided in the order of sale is filed, within three (3) business days of the sale, the sale shall be deemed confirmed without further order of the Court. The Clerk shall prepare and deliver to the Marshal's certificate of confirmation, and the Marshal shall transfer title to the confirmed purchaser only upon further order of the Court.

**(h) Disposition of Deposits.**

**(1) Objection Sustained.**

If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed from the proceeds of a subsequent sale for any expense of keeping the property.

**(2) Objection Overruled.**

If the objection is overruled, the sum deposited by the objector will be applied to pay the expenses of keeping the property from the day the objection was filed until the day the sale is confirmed. Any balance remaining will be returned to the objector forthwith.

**Rule F. Limitation of Liability.**

**(f)1. Security for Costs.**

The amount of security for costs under Supplemental Rule F(1) shall be \$1000, and it may be combined with the security for value and interest, unless otherwise ordered.

**(f)2. Order of Proof at Trial.**

Where the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, the plaintiff in the former or the party asserting a claim against the vessel or owner in the latter shall proceed with its proof first, as is normal at civil trials.

**Rule G.      Special Rules.**

**(g)1.   Newspapers for Publishing Notices**

Unless the Court orders otherwise, every notice required to be published under the Local Admiralty Rules or any rules or statutes applying to admiralty and maritime proceedings shall be published in the following newspapers of general circulation in accordance with the L. R. 77.5.

**(g)2.   Use of State Procedures.**

When the plaintiff invokes a state procedure in order to attach or garnish as permitted by the Federal Rules of Civil Procedure or the Supplemental Rules for Certain Admiralty and Maritime Claims, the process for attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.